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Supreme Court of the United States

OCTOBER TERM, 1965

No. 779

ELISHAS GEORGE and ELIZABETH GEORGE,
Petitioners

v.

UNITED STATES OF AMERICA

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

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Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

The above-named petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on October 5, 1965, dismissing the appeal as moot.

OPINIONS BELOW

The Court of Appeals wrote no opinion. The decision and judgment dismissing the appeal as moot are printed in the appendix to this petition, *infra.* [71a, 72a][1]

See also the opinions of Judge Zampano of the United States District Court for the District of Connecticut, reported at 239 F. Supp. 752 and printed in the appendix hereto. [38a, 43a]

JURISDICTION

The order of the district court was entered on March 17, 1965 [30a], and the memorandum of decision on March 22, 1965. [38a] On request of petitioners the district court reopened the case, allowed the defense and counterclaim to be filed, dismissed the defense and counterclaim and then granted the government's motion to withdraw without prejudice. [56a] The judgment of the Court of Appeals dismissing the appeal as moot was entered October 5, 1965. [71a, 72a]

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTIONS PRESENTED

I.

Whether medical doctors now stand above the Constitution, the courts and Congress as having the sole right to control the lives of the citizens of the United States and be answerable to no one.

II.

Whether federal judges are entitled to invade the domain of religion and individual decision on arguments of

[1] Figures appearing in brackets herein refer to pages of the appendix to this petition, printed *infra.* There is no printed record in the court below because the court below dismissed the appeal on government's motion to dismiss the case as moot prior to the filing of and without benefit of a printed record.

emergency and thereby reduce constitutional rights from clear and permanent guarantees to occasional and discretionary privileges removable at the will of governmental agents.

III.

Whether the case is moot. There is a continuing controversy between the parties. Petitioner Elishas George is prevented from exercising his rights because of the continuing threats of his powerful adversary. "Might does not make right." Petitioner as a free citizen is not obliged to live with his statutory and constitutional rights overshadowed and diminished by the threats of federal officials.

IV.

Whether the failure of the higher courts to take jurisdiction of this question is leading to a pattern of lawlessness and oppression of this minority group as the one people who are denied judicial review when their constitutional rights are invaded.

V.

Whether the United States Government by virtue of having a large staff of attorneys on permanent retainer can be allowed to make a "hit-and-run" attack on the constitutional liberties of the citizens and then withdraw without prejudice, pleading that "The damage is done. Our unlawful object is wholly accomplished. The case is moot."

VI.

Whether the ruling of the district court, left undisturbed by the court below, that the conscience of the doctors is more important than that of the individual, thereby preferring one religion over the other, creates an establishment of religion contrary to the First Amendment to the United States Constitution.

VII.

Whether the action of the courts below has resulted in petitioners being denied rights guaranteed by the First, Fifth and Ninth Amendments to the United States Constitution.

STATEMENT

A. *The circumstances which gave rise to the order.*

On March 15, 1965, petitioner Elishas George was admitted to the Veterans Administration Hospital at West Haven, Connecticut, for what was diagnosed as a bleeding ulcer. [62a]

Petitioner informed officials that due to his religious views as one of Jehovah's Witnesses he could not accept blood transfusion though he had no objection to other forms of treatment. The hospital record states that he "steadfastly refused to accept blood transfusions." [62a]

On March 16, 1965, hospital officials prepared a comprehensive discharge from liability that was signed by petitioner Elishas George and by his wife, Elizabeth George. This document released the hospital and staff from liability "for any injuries or death which may be occasioned by my refusal to accept blood transfusion." [36a-38a]

It appears from the record that the medical doctors involved in the case were bringing great pressure to bear in an effort to force petitioner and his wife to accept the medical recommendations. The heavy pressure and deceitful tactics employed by the medical staff are more consistent with an arrogant effort to force their will on one who dared disagree with them than with serious medical treatment. [42a, 43a, 63a] Surgery was not recommended but the problems were exaggerated to the judge of the district court by suggesting that surgery could not be done in the patient's state. [23a, 65a]

On March 17, 1965, it was alleged in the district court that the patient required a blood transfusion. No less than

five doctors, as well as the United States Attorney, were present to pressure the judge into making the order. Since there was no representation of petitioners and no cross-examination and no opportunity to call other witnesses, it is not surprising that this one-sided presentation succeeded in making out a strong case. The government's request for blood transfusion did not reveal to the court that petitioner had on the previous day signed the release above referred to. Instead, the judge was persuaded on March 17 to accept hearsay evidence that the patient had only made this decision within the hour. See the motion for injunction. [29a, 30a] At page 13a it will be noted that the judge stated: "His mother and cousin, whom I interviewed, told me that, an hour before that, this man did not have the opinions he was giving me." The release had been signed on March 16 and, even on March 15, the record describes him as having "steadfastly refused to accept blood transfusions." [62a]

The district judge granted a temporary injunction providing: "Ordered that the applicant acting through its duly accredited and licensed physicians in attendance may administer such blood transfusions as are in the opinion of the physicians in attendance necessary to save the patient's life." [31a]

While making the order enforceable by the United States Marshal to force this objectionable treatment on petitioner the judge stated: "The Court advised George it had no power to force a transfusion on him . . ." [40a] If this were true, what was the judge even doing at the hospital?

The judge told him he was free to resist, but immediately on the departure of the judge the patient was loaded with narcotic and placed under chest restraint so that he could not do anything. [13a, 67a, 69a]

On March 22, 1965, the government filed a motion to dissolve the temporary restraining order and to withdraw the complaint and application for preliminary and per-

manent injunction that had been filed on March 17 and 18. [32a] In that motion the government conceded: "After timely examinations of the laws of the State of Connecticut we could find no cases or statutes making it a crime to refuse to accept a blood transfusion or failing to transfuse a mentally competent adult male who has refused to consent to be transfused."

On March 24, 1965, counsel appeared for petitioners and filed a petition to reopen and an answer requesting a declaratory judgment. A hearing was held on petitioners' motion on May 5 and 6, 1965. The district judge vacated the order allowing the government to withdraw, directed the defense and counterclaim to be filed, dismissed the defense and counterclaim and granted the government's motion to withdraw. [56a]

The district court erroneously adopted the view that the weakness of petitioner's faith provided a basis on which to justify the court's order. [6a] This contention has opened the door to a wholly irrelevant and improper inquiry. It is indisputable that the patient refused any transfusion. Why else would he and his wife sign a waiver and release? Why else would the judge be there at the hospital? The judge's memorandum quotes Elishas George as saying "he would rather die than agree to a transfusion." [40a] How much more definite can a man get! A firm and consistent refusal having been made, both orally and in writing—that was the end of the inquiry. The judge had no right to go further.

It is clear from the record that the contest between the parties is not finished. Petitioner's offer of proof [16a] points out: "Mr. George is still a veteran, is still suffering from his bleeding ulcer, is still eligible to, and may well require, treatment at the Veterans Administration Hospital at West Haven, and may well be in precisely the same situation again, and for that reason the situation is not as moot as I think the printed record would indicate. . . ."

Petitioner's position respecting continuation of the con-

troversy is supported by the hospital record itself, which contemplates the probability of repeated actions. Doctor Richard Cooper stated: "If he returns with a similar problem, namely bleeding again from his ulcer, the same procedure would have to be carried out and a court order obtained before the patient could be transfused." [61a, 62a] And Judge Zampano promised: "Under the facts and circumstances of this case I would do it again unless a higher authority is going to say, 'Thou shalt not do this to Jehovah's Witnesses,' period." [25a]

These facts demonstrate a continuing need for treatment, a continuing intent on the part of the hospital staff to force objectionable treatment and a continuing intent on the part of the judge to repeat his order. Petitioner's rights continue to be in jeopardy.

If this is allowed the government can simply move from emergency to emergency, each time accomplishing its unlawful object and then withdraw without prejudice. Thus the law and constitutional guarantees would become an ineffective farce.

Petitioner Elishas George has a statutory right to treatment at this hospital according to 38 U. S. C. § 610 *et seq.* But his right to be treated continues only at the price of giving up other rights more important. This is a continuing threat to his rights. Issue has been joined and the district court has ruled against petitioner.

B. *The decision of the Court of Appeals.*

Petitioner appealed and the Court of Appeals dismissed the appeal without opinion in a one-line decision stating that the "motion to dismiss the appeal as moot is granted." [71a]

REASONS FOR GRANTING THE WRIT

I.

It is submitted that this Court should grant certiorari and review this case because of the very serious questions of individual liberty involved.

The essence of the case is that a patient has dared to disagree with the wishes of some medical doctors about what will be put into his body. The doctors were so scandalized that a man should think for himself that they invoked the force of the United States Government and the federal court to put a stop to such a dangerous heresy. The district court acceded to the demand for a summary hearing, overriding the objection of the adult patient and forcing him to submit to the will of the doctors.

In reality there is no power such as has been claimed in this case. It was held in *People* v. *Pierson*, 176 N. Y. 201, 212, 86 N. E. 243 (1903): "As to an adult (except possibly in the case of a contagious disease which would affect the health of others) I think *there is no power to prescribe what medical attention he should receive, and he is entitled to follow his own election,* whether that election be dictated by religious belief or other considerations." (Emphasis added.)

The Constitution of this free nation does not allow official coercion of private belief and treatment. In *Aste* v. *Brooks*, 32 Ill. 2d 361, 205 N. E. 2d 435 (1965), the Supreme Court of Illinois was faced with the identical problem and said: "What has happened here involves a judicial attempt to decide what course of action is best for a particular individual, notwithstanding that individual's contrary views based upon religious conviction. Such action cannot be constitutionally countenanced."

Neither the Congress of the United States nor the legislature of the states can invade the bodily privacy of an individual or remove his religious freedom. The Constitution does not allow it. But let him dare disagree with a medical doctor and the citizen's liberties can be removed

without so much as a hearing. That is what has happened here.

There can be no basis in law for placing the opinions or wishes of a professional group in a higher position *vis-à-vis* the constitutional liberties of the citizens than the position of the government itself. Reference is here made to the volume *Trial of Medical Malpractice Cases* by Louisell and Williams (New York, Matthew Bender & Co., 1960). At page 422 a key is given to part of the problem we have here: "Moreover, the physician in modern America is customarily treated with respect and deference. The psychology of the medical office, clinic and hospital inculcates a general attitude of reverence by the public and aloofness by the physician."

It is the submission of petitioners that everyone is entitled to proper and respectful treatment. However, the idea that any group should be placed in such a special position of "reverence" that it has more power than the government itself goes beyond the bounds of law and reason. It will be recalled that the Constitution forbids the setting up of any "title of nobility." The status of nobility is not only the matter of having a flattering title, but of having special privileges and not being amenable to the law of the land.

At the demand of the hospital staff the judicial officer crossed the line between public and private rights and made an essentially private decision in an area where there was no justiciable controversy.

The comment of Judge Miller in his dissent in *Application of Georgetown College,* 331 F. 2d 1010 (D. C. Cir. 1964), is apposite: "I suggest it is not correct to suppose that, where there is a serious emergency in life, a judge of a district or circuit court may act to meet it, regardless of whether he is empowered in law to do so."

Consider where this decision leads. If the courts are now ready to start making orders relating to purely private matters consistency would require they be ready to

decide on marriage and divorce, purchase or sale of property, what employment a man should take and at what salary, etc.

Consider that Roman Catholics object to abortion when medically indicated. Will Catholic mothers now be aborted by court order? Will the courts issue warrants of arrest for all Christian Scientists since they do not believe in medical treatment?

Mr. George was a free citizen of the United States in a Veterans Administration Hospital, yet the only patients who have no right to determine what treatment they will accept are slaves, inmates of concentration camps or animals. Were the patient's rights any higher than those three classes? Petitioner has been reduced to this status because he has dared to disagree with a medical doctor. Has this group attained the status of infallibility so no one dare disagree with it? Why should this professional group be placed on a higher status than all other citizens of the United States? Why should it have the assistance of the federal judiciary in forcing its will and opinion on those who dare disagree? Does this Court agree that the law of the United States now creates two classes: (1) the nobility (medical doctors) and (2) the other people, second-class citizens who are forced to bow their will and conscience to this privileged class?

The questions arising from this case and the implications that flow from them are so broad and so dangerous that it is impossible to exaggerate the breadth of their importance. If state experts have now taken over where free citizens formerly had a right to decide for themselves, is this country any longer in a position to point the finger of scorn at its totalitarian opponents?

II.

The present case was brought to court at the instance of the United States of America because the agents of the government wanted to force upon petitioner Elishas George

something that was a violation of his conscience. The Bible clearly instructs Christians to abstain from blood. (Acts of the Apostles, chapter 15, verses 28, 29) It was well known to respondent that the consumption of blood was a violation of petitioner's religious beliefs.

Nevertheless, without a fair hearing, without notice and on a wholly one-sided presentation by professional agents of the government, despite the constitutional guarantees, the liberty and freedom of conscience of petitioner were violated.

It is no answer to such deprivation that the officials were motivated by considerations of benevolence. As was well stated by Mr. Justice Douglas in his address to the American Law Institute (28 Notre Dame Lawyer 497): "History shows that Governments bent on a Crusade, or officials filled with ambitions have usually been inclined to take short cuts. The cause being a noble one (for it always is), the people being filled with alarm (for they usually are), the government being motivated by worthy aims (as it always professes), the demand for quick and easy justice mounts. These short cuts are not as flagrant perhaps as a lynching but the ends they produce are as cumulative; and if they continue unabated, they can silently rewrite even the fundamental law of the nation."

Note also the concurring opinion of Mr. Justice Douglas in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123 (1951), 174: "In days of great tension when feelings run high, it is a temptation to take short-cuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within."

Let us not forget the words of the late Mr. Justice Brandeis: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."—*Olmstead* v. *United States*, 277 U. S. 438, 479 (1928).

As has been stated in *Aste* v. *Brooks*, *supra*, the case

at bar "involves a judicial attempt to decide what course of action is best for a particular individual, notwithstanding that individual's contrary views based on religious conviction. Such action cannot be constitutionally countenanced."

How did the trial judge succeed in overcoming the constitutional limitations? By putting the conscience of the doctors above that of the patient and thus making an establishment of religion [42a], by entering a wholly illegal inquiry as to the religious credibility and firmness of the man's faith. [13a] Tribunals that investigate the firmness and correctness of other people's faith went out with the inquisition. This is not the function of the judiciary in this country.

The trial court has sought to rely on an *in terrorem* argument to the effect that he was not sure whether the releases prepared by the government were adequate to cover civil or criminal liability. The government agents prepared the releases to absolve them of liability. They cannot have it both ways, i.e., draw them, get them signed and argue their invalidity at the same time. These were not deathbed releases but were signed on March 16 before any serious crisis had arisen.

If releases of liability do not avail anything, then the law in this field has become a jungle of uncertainties which should be clarified by this Court. The Supreme Court of Illinois in *Aste* v. *Brooks, supra,* held such treatment cannot be forced on an objecting adult. The federal court, in this case, operating under the same Constitution, has held the opposite. It is the special function of this Court to resolve the difference so the law will have consistency.

The trial judge has specified the emotional irrelevancies upon which he relied as a basis for denying petitioner's constitutional rights: "At the present time, as I see it, even with the Illinois decision, that there are differences, differences in the man's credibility, the Judge's belief of his sincerity and his ferventness, the fact that he had four

children, the fact that his mother implored me, his cousin implored me, these are all factors, you know, that weigh on a Judge's mind. It's not so clear-cut." [25a]

If such irrelevancies are allowed to obfuscate the constitutional rights of petitioner, there is nothing to prevent a further collection of irrelevancies being used to deny the next citizen his rights. Have constitutional rights now become discretionary instead of guaranteed? Nothing could be more dangerous to the whole fabric of justice in this country than this effort to transfer constitutional guarantees to the realm of discretion. This is exchanging government by law for government by men.

From the dawn of history government agents have always been able to find some excuse which, in their eyes, justified the denial of the liberties of the people. It was to avoid this historical evil that the Constitution was enacted as a *guarantee* of certain rights. Can this Court stand by with equanimity while it is rendered nugatory and ineffective?

III.

While the court below has adopted the government's argument that the case is moot, it is submitted that this view is very unrealistic in the light of the undisputed facts of record. The record shows: "Mr. George is still suffering from his bleeding ulcer, is still eligible to, and may well require, treatment at the Veterans Administration Hospital at West Haven, and may well be in precisely the same situation again; . . ." [16a]

Petitioner's position respecting continuation of the controversy is supported by the hospital record which contemplates the probability of repeated actions. Doctor Richard Cooper stated: "If he returns with a similar problem, namely bleeding again from his ulcer, the same procedure would have to be carried out and a court order obtained before the patient could be transfused." [61a, 62a] The trial judge stated that "Under the facts and circum-

stances of this case I would do it again unless a higher authority is going to say, 'Thou shalt not do this to Jehovah's Witnesses,' period." [25a]

Thus is demonstrated a continuing need for treatment, a continuing intent of the hospital staff to force objectionable treatment and a continuing intent of the judge to repeat the order. Petitioner's rights continue in jeopardy.

The case at bar is readily distinguishable from *Application of Georgetown College*, 331 F. 2d 1000 (D. C. Cir. 1964), rehearing denied 331 F. 2d 1010, cert. denied 377 U. S. 978. Petitioner Elishas George has a statutory right to treatment at the Veterans Administration Hospital. In the *Georgetown College* case the patient was a private citizen in a private hospital. She had no statutory right to treatment in that establishment. Being prevented from returning there was not an infringement of a right she enjoyed by law.

In the instant case, however, petitioner has a statutory right to be in this hospital and a constitutional right to freedom of religion. The essential position of the government is that he must give up one or the other. As long as the government and its officials stand with an announced intention of violating his conscience he is prevented from exercising his statutory right of seeking treatment at the government hospital. This is not merely something that may arise in the future. The posture of the government is a continuing threat to petitioner's statutory right to seek treatment. It is like a cloud on the title of a man's property. The threat caused by the cloud on title is itself sufficient to found an action to clarify the matter. His legal rights do not have to remain overshadowed by a threat of any kind. Thus the attitude of the federal officials, both judicial and administrative, in this case constitutes a continuing threat to the rights of petitioner. He is not obliged to wait until the threat is acted upon.

Borchard on Declaratory Judgments, 2d edition, page 62, demonstrates that the posture of threat is sufficient to

found an action for declaratory judgment: "The defendant's acts must be sufficiently definite and final to constitute a genuine threat to the plaintiff's peace of mind or pecuniary interest." (Banks Baldwin Co., Cleveland, 1941) There is here a definite threat to his peace of mind.

The case, therefore, cannot be said to be moot. There is a continuing controversy between the parties. By its decision this Court can end the controversy and make the petitioner free to exercise his statutory right to seek treatment at this hospital.

That the case should not be considered moot is shown by Judge Burger in his powerful dissent in the *Georgetown College* case, 331 F. 2d 1010, at page 1017: "Once granted, no more remained for any court to consider. Were we to view the claims now as moot, we would have to acknowledge their mootness as soon as the challenged order was acted upon. This was in effect not only a form of instant relief but perhaps also instant mootness." The argument of mootness cannot be allowed as a means of forever insulating an unlawful act against judicial review.

The contrary position has been authoritatively stated as follows: "Where illegal activity is voluntarily discontinued, the courts may nevertheless issue an injunction to prevent its recurrence, especially if public rights are concerned." (*Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States*, Wolfson & Kurland, 1951 ed., p. 520) This is exactly the position of petitioners. See also *Henderson* v. *United States*, 339 U. S. 816 (1950), where appellant was allowed to attack regulations that had never been applied to him and that had replaced the regulations under which he suffered discrimination. No judgment by the court could have resurrected the abandoned regulations, but there was a question of public law that deserved a decision the same as in the case at bar.

In *Payne* v. *Jones*, 146 P. 2d 113, 116 (1944), the Supreme Court of Oklahoma denied a claim of mootness, "since they involve questions of vital public concern, at

least one of which has not been decided by this court, . . . we should dispose of the cases on their merits . . . since such cases soon become moot and it would be difficult to get a decision on the merits before they do become moot. . . . but an exception is recognized in cases involving public rights." See also *Willis* v. *Buchman*, 199 S. 886, 889, where the court explained that "on moot questions . . . the appeal will be dismissed . . . unless the question involved is a matter of public interest."—See also 5 C. J. S. 1354 (1), (3), pp. 410-418.

In *Lafayette Dramatic Productions Inc.* v. *Ferentz*, 9 N. W. 2d 57, the court stated: "We have before us on this appeal only the questions relating to the original or first contract for one year. Notwithstanding such questions and the issues presented by this record might be considered moot, we deem the decision, even though it may be in the nature of a declaratory decree. . . . However, our conclusion is that what we have said in this opinion would be equally applicable to any renewal or further contract obtained through similar means and under like facts and circumstances."

Appropriate for consideration here is the reasoning of the Supreme Court of Illinois in *Aste* v. *Brooks*, *supra*, where the unanimous court held on the argument of mootness: "Applying these criteria, we find that the present case falls within that highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens. . . . In situations like this one, public authorities must act promptly if their action is to be effective, and although the precise limits of authorized conduct cannot be fixed in advance, no greater uncertainty should exist than the nature of the problems makes inevitable. In addition, the very urgency which presses for prompt action by public officials makes it probable that any similar case arising in the future will likewise become moot by ordinary standards before it can be determined by this

court. For these reasons the case should not be dismissed as moot."—205 N. E. 435, at pages 437-438.

Any questions of great constitutional importance will cause the Court to hold the case for decision notwithstanding the passage of the event. (*Deputy State Supervisors* v. *State ex rel. Green*, 16 Ohio C. C. R. (N. S.) 244 (1908).) Where a question of public importance is involved and where it is necessary to provide a guide for the future the Court will decide the question regardless of mootness. In *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498 (1911), at page 515, the Court said: "The question involved in the orders of the Interstate Commerce Commission are usually continuing [as are manifestly those in the case at bar] and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government and at another time carriers have their rights determined by the Commission without a chance of redress."

Helpful on the matter of mootness are the comments of this Court in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290 (1897). There the Freight Association had been dissolved before the case came on for decision. Mr. Justice Peckham, speaking for the Court, said at page 308: "The judgment of this court is sought upon the question of the legality of the agreement itself for the carrying out of which the association was formed, and if such agreement be declared to be illegal, the court is asked not only to dissolve the association named in the bill, but that the defendants should be enjoined for the future. . . . The injunction should go further, and enjoin defendants from entering into or acting under any similar agreement in the future. In other words, the relief granted should be adequate to the occasion."

The same considerations apply equally in the case at bar. The doctors and the trial judge have announced their

future course. The order has been temporarily dissolved, but the doctors and the judge clearly plan to resume it whenever it shall suit them. Judge Zampano stated: "On the other hand, under the facts and circumstances of this case, I would do it again unless a higher authority is going to say, 'Thou shalt not do this to Jehovah's Witnesses,' period." [25a]

The relief granted petitioner should be 'adequate to the occasion,' it should permanently enjoin renewal of the illegal emergency order which the government admits is not supported by law.[2]

Dissolution of the Freight Association did not prevent the Court from doing justice to the parties. Similarly withdrawal of the illegal order against petitioner here (with announced intention of reinstating it when circumstances warrant) is not an adequate solution to the controversy. The Court can only do justice and put the dispute to rest by a decision on the merits. Compare *Walling* v. *Youngerman-Reynolds*, 325 U. S. 419 (1945), where the Court gave judgment on the merits even after the illegal activity had ceased.

A number of cases respecting mootness were relied on by the government in the court below. Examination reveals that none is controlling because in no instance has the argument of mootness been allowed to prevail in a case where the "preferred" rights provided by the First Amendment were involved.

In *Poe* v. *Ullman*, 367 U. S. 497 (1961), there were four dissenting judgments. Even the majority relied on the fact that the statute had not been enforced for eighty years: it remained as an intellectual rather than legal conflict. Had appellant been able to show a recent application of the statute it would have brought about different considerations by the Court. The petitioner here does not

[2] Government's motion to dissolve the injunction admits the illegality of its earlier position.

have to look back a long way for an example of application since that is exactly what we have before the Court at the moment.

In *Eastern Airlines, Inc.* v. *Civil Aeronautics Board,* 185 F. 2d 426, vacated 341 U. S. 901 (1951), it was pointed out by the court of appeals at page 429 that there was no constitutional guarantee against competition. There was in that case none of the "preferred" rights of the First Amendment.

The entire posture of this case is one of continuing controversy where the relief granted should be adequate to the occasion. This can only be if the Court grants the petition for certiorari and reviews on the merits.

It has often been said that the rights guaranteed under the First Amendment are in a *preferred* position. The whole American system of government is founded on the necessity of keeping open these areas of freedom of speech, press and worship. If the theory of "mootness" can be stretched to avoid judicial review of "hit-and-run" attacks on individual liberty, then a ready instrument has been forged for circumventing the guarantees provided by the Bill of Rights.

IV.

This petition is not the first time Jehovah's Witnesses have sought review of a "hit-and-run" attack on their constitutional freedoms arising from forced blood transfusion. —*Application of Georgetown College,* cert. denied 377 U. S. 978 (1964); *Anderson* v. *Raleigh Fitkin Memorial Hospital,* cert. denied 377 U. S. 989 (1964).

While judicial review is a fundamental part of the American system of jurisprudence, allowing these "hit-and-run" attacks on the liberties of this minority group means that the legal right of review available to all other citizens is denied to this group.

The case relied on by Judge Zampano is the *Georgetown College* case, 331 F. 2d 1010 (D. C. Cir. 1964). This

was a decision of the United States Court of Appeals for the District of Columbia rendered by Judge J. Skelly Wright sitting alone. The case was brought up before the full bench on a petition for rehearing. Ten judges actually considered the case, Judge Edward A. Tamm in the district court and nine judges in the court of appeals. Only Judge Wright has adopted the extreme view expressed at length in his opinion wherein he seeks to justify this unprecedented invasion of the individual right of decison. Not one other judge has spoken in support of the action taken. Four dissented.

The *Georgetown College* case stands with Judge Wright *pro* and four of his colleagues *contra*. But because it was not clearly reversed, it has been treated as though it had some legal authority which in reality it no longer possesses. The case at bar is another example of the same thing. The government admits the error but the courts below have refused to correct it.

If the order is instantly self-executing and instantly moot, then a means has been found of ignoring law and order and the jurisdiction of review that is vested in this Court. Thus we can proceed from emergency precedent to emergency precedent with no case ever getting a review or a serious hearing until a pattern of lawlessness is formed and the constitutional guarantees are completely undermined. Surely speedy and arbitrary action, by the fact it is accomplished under color of, but without authority of law, cannot be forever insulated against judicial analysis. This is a new and dangerous precedent that is of first impression in this Court and indeed in any other court in the United States.

Every aspect of this case reinforces the submission that good administration of justice and the public interest call for review and reversal by this Court.

At the moment judicial review is denied only to Jehovah's Witnesses. But lawlessness is like cancer: it

spreads. Consider, too, the comment of Hallam: "I am never very willing to admit as an apology for unjust or cruel enactments, that they are not designed to be generally executed; a pretext often insidious, always insecure; and tending to mask the approaches of arbitrary government." —Hallam, *Const. Hist. of England*, Vol. 1, p. 125, New York, Crowell ed.

Consider also the language of Mr. Justice Brennan in *Lamont* v. *Postmaster General,* 381 U. S. 301 (1965), at p. 309: "In any event, we cannot sustain an intrusion on First Amendment rights on the ground that the intrusion is only a minor one. As the Court said in *Boyd* v. *United States,* 116 U. S. 616, 635: 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.'"

This development is too dangerous. The time to stop it is now, as Judge Sutherland, dissenting in *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 141 (1937), warned: "Do the people of this land . . . desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph that can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while there was yet time." (Emphasis added.)

V.

It will be noted that the government went to court on March 17, 1965, on a very summary proceeding without the petitioner being represented. The government obtained the total relief that it wanted and the record establishes the damage, the invasion of petitioner's constitutional rights, weeping and depression the petitioner suffered as a result of the action of the government. [65a, 66a, 69a] Having accomplished its total object, the government then sought, on March 22, to withdraw without prejudice, admitting its course of action had been unsupported by law. The government's petition stated: "After timely examination of the laws of the State of Connecticut we could find no cases or statutes making it a crime to refuse a blood transfusion or failing to transfuse a mentally competent adult male who has refused to consent to be transfused." [33a]

The government, having by expeditive procedure, accomplished an objective that it now admits to be unlawful, has adopted the extreme position of wishing to withdraw without prejudice, thereby keeping the door open to a further unlawful assault upon the rights and liberties of petitioner. This series of contradictory postures means that the petitioner is left in the position that he has certain constitutional rights on paper but they are rendered empty and nugatory by virtue of the procedural inconsistency of his powerful adversary.

That the government must be held to proper standards of law and fair dealing is clear from the comments in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123 (1951), at 177: "When the Government becomes the moving party and levels its great powers against the citizen, it should be held to the same standards of fair dealing as we prescribe for other legal contests. To let the Government adopt such lesser ones as suits the convenience of its officers is to start down the totalitarian path."

VI.

The district court has given scant consideration to the conscientious views of the patient but has shown great concern over the beliefs of the doctors. The trial court has held: "In the difficult realm of religious liberty it is often assumed only the religious conscience is imperiled. Here, however, the doctor's conscience and professional oath must also be respected. . . . To require these doctors to ignore the mandates of their own conscience, even in the name of free religious exercise, cannot be justified under these circumstances. The patient may knowingly decline treatment, but he may not demand mistreatment." [42a]

The patient has control over his own body. It is not perhaps unreasonable to expect that a conscientious doctor would know and respect the law that says: "As to an adult there is no power to prescribe what medical attention he should receive, and he is entitled to follow his own election." —*People* v. *Pierson,* 176 N. Y. 201, 212 (1903).

The view of the trial judge appears to be that if the patient disagrees with the doctor, it is the duty of the doctor to force upon the patient what the patient declines to take. If the patient were a slave, an animal or an inmate of a concentration camp, this might be a reasonable view of the powers of the doctor. But in a free country where citizens still have right of self-determination the view expressed by the trial judge is quite insupportable.

The petitioner-patient has shown clearly his objection on grounds of conscience to the treatment recommended by the doctors. The judge ignored this and preferred instead to hold high and inviolate the conscience of the doctors. So one belief is preferred above the other and this in a country where the law makes all religions equal.

The theory of treating all religions on the same basis before the law is well stated by the Court in *Watson* v. *Jones,* 80 U. S. (13 Wall.) 679, 728, thus: "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious

doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

While the law as laid down by this Court "is committed to the support of no dogma, the establishment of no sect," this is not necessarily true of the law as laid down by the trial judge. He has definitely preferred medical conscience over the conscience of the citizen. He has preferred the dogma of medical infallibility over the demand of Holy Writ to abstain from blood. (Acts 15:29) The United States District Court has become a party to enforcing the conscience of one group upon another.

But the First Amendment not only guarantees free exercise of religion, it also forbids the "establishment of religion." Here the judicial officer is using the powers of the United States to establish a particular view and to force it on those who object. Thus the medical view of what is right and wrong becomes an establishment of religion enforceable by the courts and the United States Marshal.

The implications of this matter are so broad and so dangerous that the case eminently calls for review by this Court on certiorari.

VII.

A further feature of importance in this case is the denial by the courts of the guaranteed right of freedom of religion and freedom of conscience. The issue of religious liberty that is predominant makes it peculiarly one that calls for review of the highest tribunal. The rights under consideration here are in "the preferred position the freedoms of the First Article occupy." (*Prince* v. *Massachusetts*, 321 U. S. 158, 167 (1944)) Judge Edgerton, in *Busey* v. *District of Columbia*, 138 F. 2d 592 (D. C. Cir. 1943) stated: "Freedoms of speech, press, and religion are entitled to a preferred constitutional position because they

are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut*, 302 U. S. 319, 325) They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. Any interference with them is not only an abuse but an obstacle to the correction of other abuses." What has happened in this case below is a clear invasion of the conscience and freedom of petitioner in violation of the guarantees of the First Amendment. This case involving violation of his liberties has a preferred claim to review by this Court on certiorari.

The Virginia Bill of Rights has often been quoted in this Court as making explicit the principles outlined in the First Amendment: " . . . all men are equally entitled to the free exercise of religion, according to the dictates of conscience; . . ." Not until society itself is threatened is there any basis for denying that freedom of conscience, which is the sacred right of the individual.

That petitioner's objections are religious is clear from the opinion of the trial court. [38a] In addition to the Bible text heretofore referred to at Acts 15:28, 29, the Bible, at Leviticus 17:10 states (*New World Translation*): "As for any man of the house of Israel or some alien resident who is residing as an alien in your midst who eats any sort of blood, I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people."

Petitioner believes the Bible to be the Word of God and accepts the instruction therein to 'abstain from blood.' He regards this conscientiously as a religious obligation. This factor is recognized as being part of the case. The Constitution protects his conscientious right to believe and to act in accordance with the dictates of his own conscience and there is no power to interfere with him. Persons of the Jewish faith abstain from pork. Persons of the Roman Catholic faith abstain from meat on certain fast days. Christian Scientists abstain from medical care. The First

Amendment protects the individual conscience in all such instances. Surely the Court would not countenance any subterfuge, no matter how subtle or well-intentioned, that would violate these conscientious views. It is submitted that petitioner's rights are no less sacred and no less entitled to the protection of the constitutional guarantees of the First Amendment.

Involved are the views of a minority group that differ from those commonly accepted. Surely that cannot be a good and valid reason for denying them. It was said by Judge Parker in *Barnette* v. *West Virginia State Board of Education*, 47 F. Supp. 251, 253 (1942), affirmed 319 U. S. 624 (1943): "Courts may decide whether the public welfare is jeopardized by acts done or omitted because of religious belief; but they have nothing to do with determining the reasonableness of the belief. That is necessarily a matter of individual conscience. There is hardly a group of religious people to be found in the world who do not hold to beliefs and regard practices as important which seem utterly foolish and lacking in reason to others equally wise and religious; and for the courts to attempt to distinguish between religious beliefs or practices on the ground that they are reasonable or unreasonable would be for them to embark upon a hopeless undertaking and one which would inevitably result in the end of religious liberty. There is not a religious persecution in history that was not justified in the eyes of those engaging in it on the ground that it was reasonable and right and that the persons whose practices were suppressed were guilty of stubborn folly hurtful to the general welfare."

Mr. Justice Murphy warned in his powerful dissent in *Prince* v. *Massachusetts*, 321 U. S. 158, 175 (1944): "No chapter in human history has been so largely written in terms of persecution and intolerance as the one dealing with religious freedom. From ancient times to the present day, the ingenuity of man has known no limits in its ability to forge weapons of oppression for use against

those who dare to express or practice unorthodox religious beliefs. And the Jehovah's Witnesses are living proof of the fact that even in this nation, conceived as it was in the ideals of freedom, the right to practice religion in unconventional ways is still far from secure. . . . To them, along with other present-day religious minorities, befalls the burden of testing our devotion to the ideals and constitutional guarantees of religious freedom. . . . Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger."

There is no right of the state in grave danger here. If there is any danger it is to the individual and he is prepared to accept the danger. There is no interest of the state involved; there is no jurisdiction in the courts to deny this liberty to the individual citizen. This is an arbitrary and insupportable invasion of his right to make a private decision.

The practice of invading the area of private decision, which was instituted by Judge Wright in the *Georgetown College* case, has caused much concern among law writers. Their opinions add weight to the submissions of petitioners.

The South Carolina Law Review commented on the *Georgetown College* case at 16 S. C. L. R. 552, at 559: "The case raised the various questions of compulsory treatment versus the religious beliefs of the person, but refused to fairly decide these issues. The opinion in this case lays down no objective legal test to determine the court's power to act where it is presented with a similar factual pattern."

Note also the comment in 26 Montana Law Review 95, at 104: "As the law stands today, there is no legal justification for the kind of interference and the expansion of any of the doctrines discussed, in any general way, would be an excessive infringement upon the personal liberties of the individual guaranteed under the First Amendment."

CONCLUSION

Counsel for the government would excuse the action of the trial court and the government on the ground that this branch of the law is uncertain and under the emergency situation that existed they did not know what to do. Petitioners agree. In fact it is this very uncertainty and the damage that is being done by rushing from emergency hearing to emergency hearing that makes it essential for this Court to grant certiorari and render a judgment that will end the uncertainty.

The federal courts and the state courts are both operating under the same Constitution. The state courts have said that the Constitution does not allow forced medical treatment. (*Aste* v. *Brooks*, 32 Ill. 2d 361, 205 N. E. 2d 435 (1965)) The federal court here has said the opposite. Surely the situation demands clarification by this Court as to what is the law.

Wherefore petitioners pray that the requested writ of certiorari be granted.

Respectfully,

CHARLES KOOZMAN
Attorney for Petitioners
9 Rockefeller Plaza
New York, New York 10020

W. GLEN HOW, Q. C.
BURTON M. WEINSTEIN
Of Counsel

October, 1965.

APPENDIX

DOCKET ENTRIES IN DISTRICT COURT

—A—

DATE 1965	
3/17	Complaint, filed. Summons issued and together with copies of same and of complaint handed to Marshal for service.
3/18	Marshal's Return showing service, filed. - Summons & Complaint.
3/18	Motion for Preliminary Injunction and Memorandum of Law, filed. Order entered granting same. Zampano, J. M-3/24/65
3/22	Motion to Dissolve Temporary Restraining Order and to Withdraw Complaint and Application for Preliminary Injunction and Permanent Injunction, filed.
3/22	Hearing on Government's Motion to Dissolve Temporary Restraining Order and to Withdraw Complaint. Government reports to the Court that both defendants are compos mentis. Issue between the Government and the defendants eliminated and releases obtained from defendants. Court grants motion to dissolve order and withdraw complaint. Court will file a written Memorandum accordingly. Zampano, J. M-3/22/65
3/22	Following order endorsed on Motion to Dissolve Temporary Restraining Order, etc.: "Motion granted. Memorandum of Opinion to be filed." Zampano, J. M-3/24/65 U.S. Atty. & Defendants notified by mail.
3/24	Memorandum of Decision on Motion to Dissolve Temporary Restraining Order and to Withdraw Complaint, entered. Motion is granted. Zampano, J. M-3/24/65 Copy handed to U.S. Attorney, copies mailed to defendants.

DATE	
1965	
3/25	Petition that Order of March 22, 1965 be reopened and a hearing and declaratory judgment be granted, filed by defendants together with a copy of proposed answer.
3/26	Withdrawal of Action, filed by plaintiff. Copy sent to U.S. Attorney and Atty. Weinstein.
3/27	Appearance of Burton M. Weinstein, Esq., entered for the defendants.
4/1	Notice of Hearing of Petition to Reopen filed by defendants. (Letter)
4/1	Defendant's Memorandum in Support of Their Petition to Reopen, filed.
4/20	Revision of Memorandum of Decision on Motion to Dissolve Temporary Restraining Order and to Withdraw Complaint, entered. (Revision of first complete paragraph on Page 2) Zampano, J. M-4/21/65 Copy handed U.S. Atty. and copy mailed to Atty. Weinstein.
4/30	Affidavit of Thomas T. Amatruda, Jr., M.D., filed.
"	Affidavit of Hugh H. Tilson, M.D., filed.
"	Affidavit of Richard A. Cooper, M.D., filed.
"	Affidavit of James J. Fischer, M.D., filed.
"	Affidavit of Elizabeth Marshall, R.N., filed.
"	Affidavit of Edith Taylor, filed.
"	Affidavit of Creola Gregg, filed.
"	Affidavit of Frances Eagles, filed.
5/3	Affidavit of Howard R. Moskof, filed.
"	Memorandum in opposition to Defendants' Motion for Rehearing and Motion for Declaratory Judgment, filed by plaintiff.
5/5	Hearing on Petition to Vacate Order of March 22, 1965 and Petition to Reopen. W. Glen How of Toronto is admitted for the purpose of this

DATE 1965	
	case. Under offer of proof of testimony, Affidavit of Edward F. Kunin filed by defendant. Def. Ex. 1 filed. Petition Granted. Zampano, J. M-5/6/65 Court adjourned at 11:07 A.M. in this case to 9:15 A.M., May 6, 1965 in chambers.
5/6	Hearing held in chambers, after which court opened and stated for the record the rulings taken by the court in chambers. (See transcript) Zampano, J. M-5/6/65
5/6	Order on Defendants' Motion to Reopen, entered. ORDERED, that defendants' motion to reopen is hereby granted; further, the order of this court dated March 22, 1965 dissolving the temporary restraining order is hereby vacated; further, that the order of this court dated March 22, 1965 granting the government's motion to withdraw its complaint and to dismiss this action is hereby vacated; further, that treating defendants' answer and prayer for relief as an answer and counterclaim for declaratory relief, and treating government's opposition to the motion to reopen and its opposition to the counterclaim for declaratory relief as a motion to dismiss the defendants' counterclaim, government's motion is granted, defendants' counterclaim is hereby dismissed; further, the order of this Court dated March 22, 1965 dissolving temporary restraining order, which order was previously vacated, is hereby reinstated; further, the order of this court dated March 22, 1965 granting the government's motion to withdraw its complaint in this action and dismissing the government's action, which order was previously vacated, is hereby reinstated. Zampano, J.

DATE 1965	
	M-5/6/65 Copies mailed U.S. Atty. and Atty. Weinstein.
5/14	Affidavit of Robert S. Tiller, Chief Registrar Division, Veterans Administration Hospital, West Haven, Conn., filed by plaintiff.
5/14	Affidavit of Richard A. Cooper, M.D., Veterans Administration Hospital, West Haven, Conn., filed by plaintiff.
5/14	Affidavit of Hugh H. Tilson, M.D., Veterans Administration Hospital, West Haven, Conn., filed by plaintiff.
5/14	Affidavit of James J. Fischer, M.D., Veterans Administration Hospital, West Haven, Conn., filed by plaintiff.
5/28	Court Reporter's Notes of Proceedings of May 5 & 6, 1965, filed. Russell, R.
6/4	Court Reporter's Transcript of Proceedings of Wednesday, May 5, and Thursday, May 6, 1965, filed. Russell, R.
7/1	Notice of Appeal, filed by defendants. Copies handed U.S. Attorney.
7/16	Veterans Administration Hospital clinical record of Elishas George, filed.
7/20	Affidavit of Burton M. Weinstein, filed by defendants.
8/5	Stipulation filed that the time for filing record and docketing be extended 30 days, to September 4, 1965. Order entered thereon approving same. Blumenfeld, J. M-8/5/65 Copy returned to U.S. Atty. and copy mailed to Atty. Weinstein.

TRANSCRIPT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ELISHAS GEORGE AND ELIZABETH GEORGE,
Defendants.
} Civil Case No. 10,889

Before Hon. Robert C. Zampano,
United States District Judge,
At New Haven, Connecticut,
On Wednesday, May 5, and
Thursday, May 6th, 1965

Appearances:

For the United States of America
HOWARD MOSKOF, Asst. U.S. Attorney
Federal Building
New Haven, Connecticut

For the Defendants
BURTON M. WEINSTEIN, Esquire
1115 Main Street
Bridgeport, Connecticut
With Whom Was: W. GLEN How, Esq., Q.C.

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THE COURT: . . . Now, with the procedural problem, I will say this right at the outset: I certainly have no intention of blocking a higher forum from deciding this very important issue by any procedural matter, or through a procedural defect, or for a procedural reason.

Now, as I see it, the present status of the case is that an appeal at the present time would be limited to whether

or not the Court abused its discretion in granting the motion to dissolve, and the motion to withdraw the complaint.

So, therefore, a higher forum would be limited, it would seem to me, to that issue. If the higher forum determines that I did not abuse my discretion, that would end the matter. If it decided I did abuse my discretion, it would send it back and order me to reopen the matter, and frame the issues for an appeal on the merits.

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THE COURT: There's quite a difference there. As I see it, there may be circumstances — and I might as well tell you now, gentlemen — there might very well have been circumstances that I would never have issued that order. But, under the circumstances and facts as I found them that evening, I issued it.

But in any event, let me ask you this, Mr. Moskof: If the answer which was filed tardily had been filed prior to your motion to withdraw, your motion to dissolve, do you think I could have granted the motion without a hearing?

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THE COURT: All right. Now, let me ask you this: Did the defendants get notice of your motion to dissolve the motion to withdraw?

MR. MOSKOF: May I have a moment, your Honor?

THE COURT: Yes. My file reflects nothing on that point.

MR. MOSKOF: The day it was filed, it was mailed to them, your Honor. There was no counsel at this time, and in fact, we advised Mrs. George that we — I don't have a recollection on that point—I believe I advised Mrs. George that we intended to do this. No counsel had appeared as of that time, and we mailed copies of our motion to Mrs. George.

THE COURT: Was that after I granted it, or before?
MR. MOSKOF: Before, your Honor.

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MR. MOSKOF: We would contend that this is moot, again, because it serves no useful purpose, although we understand the position here, and we would not object to your Honor's reconsidering our order for purposes of appeal.

Now, as to the question of appealing your Honor's temporary restraining order, we think that if there is a procedure, we think that there is an argument — and again, I don't want to commit myself to the Government's position — but we think that because of the finite nature of your Honor's order, that a, as indicated in the Government brief — and appeal at that time to the Court of Appeals, and request for a restraining order would have been appropriate, and even think that an appeal at this time from the temporary restraining order motion under the argument that this is an important issue is appropriate.

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THE COURT: In fairness to you, Mr. Moskof, and to the Government attorneys, my recollection is clear that on the night this came up, that we were all distressed over the pressure we were under in having to reconcile the religious beliefs of these people and the pressures from the medical staff, and our dilemma in not finding, really, any law except the Georgetown case, and the children cases, which we all agreed were not relevant, to aid us.

And the ground of mootness, as I see it, can always be handled by the Court of Appeals. I mean, as I read the cases, the question is moot, there is no question about it. I ordered the transfusions, and he got the transfusions, and whether or not it's an issue of substantial public interest, is not for me to decide, but the Court of Appeals.

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THE COURT: Well, I am going along with you, but only to an extent. If I reopen this, I certainly am not going to consider anything that wasn't before me that evening.

Now, I can see facts, as I said before, and circumstances in which I would not have entered this order, and you can put on evidence from now on until next week of those facts and circumstances, and I would be in maybe complete agreement with you, but the facts and circumstances as of the time I entered the order, and up to the time I entered the order, I believe is relevant.

And I think in fairness to the Government, and in fairness to the Court, and in fairness to another forum, that the law may very well be not black and white, in that the — a law is established

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that no transfusion shall ever be given to Jehovah's Witnesses. It may very well be that the Appellate Court may agree with me that there are shades of differences, and that under some circumstances and facts, that transfusions should not be ordered by a District Court.

Under other circumstances and facts, it is permissible for a District Court to order it, or any other Court, and I even read the Illinois Court as leaving exceptions to its ruling.

So when you say you would like to present facts and circumstances, I urge you to consider that I will not accept — accept hypothetical situations.

MR. WEINSTEIN: No, your Honor. I had in mind presenting by admissible evidence the facts as they existed at that hospital in the George case, up to the moment that your Honor entered that order.

THE COURT: What I am going to do first, is, I am going to reopen the case, not only on the grounds urged by the parties, but I am not satisfied that the Georges had

service, proper service, of the motion to withdraw. That leaves us with whether or

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not I will grant a motion to set aside my order dissolving the temporary injunction, and I assume reversing myself on the merits, and I will reserve those two issues for a little later.

But right now, I will reopen the case, and, as I said, primarily because the Georges did not, in my mind, get proper notice of the motion to withdraw the complaint.

Now, what I do with the temporary injunction that I have already dissolved, and what I do with the temporary restraining order, I am just going to leave in the air for a minute or two. So that brings us, then, right head on with the issues.

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MR. WEINSTEIN: Well, your Honor, the first thing I would like to introduce is an affidavit, a copy has already been given to the United States Attorney, which bears on the question of the availability of counsel for the defendants at the time of the hearing.

I would offer this affidavit of Mr. Edward Kunin, a member of the Bar of the State of Connecticut, and —

THE COURT: It may be filed.

MR. WEINSTEIN: Thank you.

Mr. Kunin's affidavit states that his office received a call from Mrs. George on the 17th, that sometime that afternoon he'd called the hospital back

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in response to that call, and asked to be put in touch with Mrs. George. He was told by someone at the hospital who answered the phone there — personal call — that he couldn't be put in touch with her because she was someplace on the wards, and they didn't have telephone connections with the

wards, but they'd give the message, and he hung up, and that was the last he ever heard of the Georges. That's his affidavit.

Mrs. George tells me — and I will offer proof through her testimony — that she never did receive any message from anyone at the hospital to the effect that the attorney she had called had returned her message, and was waiting for her call. And I think this bears very importantly on one of the fundamental bases for your Honor's opinion that in effect local counsel of their choice had been waived.

So that this, in effect, was not an ex parte, but a pro se hearing.

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MR. WEINSTEIN:

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The next offer of proof we would make, and one which I think is of the utmost importance, addresses itself to the Court's finding that Mr. George could

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at any time he'd chosen to do so, have prevented the transfusion by so much as raising his hand, and the implication of the finding being — well, Mr. George was really trying to have his cake and eat it, too.

The Court, in effect, was giving him an option, and not issuing a mandatory order except perhaps asking Mrs. George to keep her from and interfering — Well, we would put Mr. George on, and he will testify that within fifteen minutes, someplace between immediately and fifteen minutes after your Honor left, he was given an injection of a sedative, and that immediately thereafter his recollection became hazy.

That, in fact, he had no recollection at all of the transfusion, of the blood being inserted, and in further support of that, the Government has filed an affidavit dated April

6, 1965, of a Dr. Hugh H. Tillson — this is the plaintiff's own affidavit — and Dr. Tillson says that on March 18th — and let me read the appropriate part — at 11:15 p.m., March 18th, I was notified the patient had climbed

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out of the bed, over the side rail, stating he wished to void. Because of a mild confusion secondary to his sedation, he was placed under simple chest restraint.

Now, Mr. George will testify that he was placed under heavy sedation immediately after your Honor left. The doctor noted that the man was in confusion secondary to heavy sedation.

The following day at 11:15 p.m., or during the whole time that the blood was being administered. Under those circumstances, it is at best a fundamental failure of communications for the Court, or for anyone, to conclude that the defendant consented by an act of omission to take the transfusion.

The reason being that while he was not physically restrained, perhaps while he was not being held down, certainly the chemical restraint was as effective, and the implication of consent on the part of Mr. George should form no part of the justification for your Honor's opinion granting the motion.

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THE COURT: Well, the offer of proof is accepted, and is considered by the Court, but is rejected with respect to any change in the Court's opinion on the merits for the following reasons:

One, that the movement of the hand was not

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something that Mr. George was told to do, after I left, or at the time the transfusions were actually to be given to him.

My recollection is clear that the doctor walked over to Mr. George and said, "Mr. George, all you have to do is put your hand, now, over your arm, and we will not give you a transfusion."

Mr. George at that time, and as he said repeatedly that evening, said, "I will in no way make any move to stop these transfusions."

And so, let's get right down to it, Mr. Weinstein. I would be less than candid with you with the full realization that I could not read Mr. George's mind, but you put your finger right on it, and when you said that, "I felt that Mr. George wanted his cake and to eat it, too," well, I didn't feel quite that — with that cliche in mind, but I felt that Mr. George wanted those transfusions and would accept those transfusions so long as the Court ordered it, and took the responsibility for it.

I am not going to cut through a lot of philosophical, theoretical, and legal reasoning.

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At the time I signed that order, my analysis of Mr. George's credibility, of his mother, of his wife, and of his friends, that were there, I weighed them, and I came to the conclusion that so long as the Court took the responsibility, so to speak, that Mr. George would not only accept the transfusions, but would welcome them.

Now, I thought I would tell you that, Mr. Weinstein.

MR. WEINSTEIN: We appreciate it.

THE COURT: That's why I said earlier in this hearing, that there would maybe have been circumstances where I would not have ordered those transfusions, and one of the circumstances would have been if I did not feel as I just told you I did.

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THE COURT: The point I am trying to make is, I don't think a man who is adhering to his religious beliefs

has to make any protest, has to take any action, has to raise his hand, or do anything to enjoy his religious beliefs.

But where I hold that is crucial is on the issue of credibility. For example, when I entered the room, the first thing Mr. George said to me was, "I am not going to fight you. I will accept the transfusions if you order it."

Secondly, the simple maneuver of raising his hand, he refused to do. His mother and cousin,

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whom I interviewed, told me that, an hour before that, this man did not have the opinions he was giving me.

Now, just hold on. Listen to me. After all, I have to weigh all the testimony that I have before me.

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MR. WEINSTEIN: He would testify — at least I was so advised during the two interviews I had with him, and at this point, I trust your Honor

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will appreciate that the counsel for the defendants have been under time restraints, as has been the Court, this has been a rather important case, handled in a very short period of time, and there have been other Court commitments, so that perhaps some of the paper work might have been done a little bit better, but we do our best — Mr. George will testify that at no point from the moment he entered the hospital, and shortly thereafter signed a release, until he left it, did he waiver in the slightest, and any representations to the contrary are at best misunderstandings of his position, that if the raising of a hand, if some token resistance within his capacity would have stopped the matter, and had he been aware of that fact, he tells me he would have done it.

Now, this is another reason why I think this point can only be explored adequately through Mr. George.

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MR. HOW: May it please the Court. It would be testified by the witness Mr. George, that the teachings of Jehovah's Witnesses require due and proper respect for the superior authorities of this world such as the Courts, and in consequence, it would be wrong for him to resist an order which the Court made. It doesn't necessarily mean that he wants it, even though the Court may have assumed that as a result of it, perhaps a different point of view, but from the standpoint of Mr. George, when he said he is not going to fight the Judge or resist an order, this doesn't and necessarily by any means signify that he wanted to have the Court to make the order which the Court in all good faith did make, but rather was an expression simply of his belief as to a proper course of action.

Now, the further proposition would be this matter of weighing moral responsibility, that while he would indicate to the Court that, well, if the

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Court takes the responsibility, then the Court must bear the responsibility.

Now, the Court would assume, and perhaps quite properly so in the absence of adequate explanation, that the man was in essence inviting the Court to go ahead and take the responsibility.

THE COURT: You are absolutely correct.

MR. HOW: I understand exactly why it is that your Honor came to that conclusion, but that's why an explanation is essential. And I think would have, perhaps, given the Court a very different point of view. If I may illustrate, if we have someone, for example, who has no belief in God, or is an agnostic, or something of the kind, then to tell somebody whose mentality is based on that type of thing, to tell him that something he does is going to make him responsible before almighty God would mean nothing to

him, because he's not that concerned, he doesn't believe in God.

However, when a person who is a sincere believer, says, "You must bear the responsibility before God," it's the same language, but in the mind

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of the person speaking, this is an extreme anathema.

Now, the Court hearing the word "responsibility," simply — and perhaps having, I guess there were a number of doctors, and so on, around, I can understand your Honor is under the pressured circumstances, of course, not having a detailed, careful consideration, such as your Honor ordinarily would have, one might come to a quick conclusion on the basis of certain language.

However, it would be testified to by Mr. George that when he speaks of the responsibility, it would simply indicate to the tribunal the extreme responsibility and to, in essence, urge the Court not to do it, rather than to say, have the effect of, "Well, go ahead and take the responsibility. That relieves me."

This may be the conclusion that the Court came to, not, perhaps, understanding in detail the mental process that motivated the expression that was used by the witness at the time. We don't dispute the good faith of the Court under the circumstances, but simply to indicate that full explanation may lead

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to a very different point of view.

THE COURT: The Government's motion to disregard Mr. George's testimony as set forth in the offer of proof is overruled. The offer of proof may stand as part of the record before me, and for appeal.

However, I accept the offer of proof in lieu of his testimony.

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MR. WEINSTEIN: Thank you, your Honor. With regard to — Oh, one other matter which I don't think raises a problem, but does bear on the question of mootness, and that is that Mr. George is still a veteran, is still suffering from his bleeding ulcer, is still eligible to, and may well require, treatment at the Veterans Administration Hospital at West Haven, and may well be in precisely the same situation again, and for that reason, the

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situation is not as moot as I think the printed record would indicate it might be. It's not a matter of, well, he got the transfusion and that's the end of that.

We are in a continuing situation, and having gone this far — having — on the first go-round, having invested this much of the time and effort of the Court and of the Government, and counsel for the defendant, we might just as well see it through and have a clarification for the future, and that our offer of proof on the facts would be that he is still a veteran, and he is still eligible and still has the ulcer.

* * * * *

MR. WEINSTEIN: The final matter would be an offer of proof by Mrs. George to the effect that on the afternoon of the 17th, the day of the first transfusion, the night of the hearing, the doctor — she believes it was Dr. Amontaro, and one other person who was

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not wearing the medical coat, was wearing a business suit — took her aside and told her that her husband had signed a consent form to have the transfusion, and that there was no point in her refusing to sign anything further, asked to see the form, and she was told that it was not necessary, that this is —

Then she asked, "Well, why do you need my signature for, if he's already signed?"

Well, they said, "It's some kind of a formality."

Well, her reply was to the effect that, "Well, if he wanted to commit the sin, of course, well, then, he committed the sin, but this does not justify me in committing a sin," at which point the person who was not the doctor, was this other person, who would probably be identified if we were able to get to the hospital — we don't know the exact identity of the person at the moment, at which point he apparently berated Mrs. George, and suggested that she was just taking this attitude to collect Mr. George's insurance, so that she could live happily ever after on it, and she pointed out

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that it would be barely enough to cover funeral expenses. So that motivation was not only uncalled for and unjustified, but without any basis at all.

Now, we offer this to show that the extent to which the officials of the hospital were going to get this transfusion done, seems to have gone beyond the ordinary medical practice. This had become some kind of a point of ego with the doctors which far transcended the obligations of the medical profession, these tactics smack of questionable backroom-at-the-police-station tactics, and not the kind of procedure which this Court would, in effect, sanction, approve, if the original order was let stand, and that's the essence of that order.

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MR. WEINSTEIN: Well, with regard to Mrs. George, yes, that is the extent of our offer. Except that she would be able to corroborate that she was in the room, she would be able to corroborate Mr. George's offer, which has already been accepted,

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that he got the sedative shortly after your Honor left, and

that he appeared not to be functioning rationally after that, that point.

THE COURT: Mr. Moskof?

MR. MOSKOF: Well, your Honor, as I am sure Mr. Weinstein knows, all this characterization of the activities of the doctor is both inadmissible as evidence, and highly inappropriate, and we would object strenuously to the admission of that portion of it.

As to what transpired at the hospital between Mrs. George and the doctors factually, again, I don't see the relevancy of it, and we would object to it.

THE COURT: The offer of proof may stand. It is accepted in lieu of testimony. The objections of the Government are noted, and may be preserved. The Court finds that there was absolutely no evidence of the type of conduct on the part of the doctors that would support or in any way justify the characterizations that the witness would have made, if she were on the stand. I find that throughout

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the hearing, they were most conscious, actually of the religious beliefs of this patient, they were as distressed as we all were, in a way that they had to trespass in some way upon these beliefs, and that was their demeanor before me, and their conduct before me, and I so find.

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THE COURT: Oh, incidentally, I should mention this, because it came up not only during your offer of proof, but in your brief, and that's the matter of signing releases.

MR. WEINSTEIN: Yes.

THE COURT: Now, I will just say this for the record: that I am not convinced as of today that those releases would relieve these doctors civilly. Moreover, I am less convinced that those

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releases would relieve those doctors criminally. So the reason I am making that point, Mr. Weinstein, is that there's some indication in your brief that had I had some time to reflect on the effect of a release, it might have swayed me.

Well, I knew the effect of a release before I went up to the hospital.

On the other hand, I also have had cases where a release has proved a very inadequate defense, not only as a Judge, but as an attorney in my own practice. Moreover, I have serious questions whether the doctors, who indicated to me that they were more conscious of their criminal responsibility, if they just did not act at all, and that the releases in no way protected them, it is that position that I find to be very strong.

Now, I — to sum up, I am not certain of the law, that the law is, as you say, that a release automatically and without question, without reservation, releases anyone from civil liability.

Secondly, you never did take up in your brief the possibility of criminal responsibility on

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the part of those doctors, if they just sat back and did nothing.

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THE COURT: I will clear that up right now, that there was not the thought in my mind that

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he was not compos mentis, when he signed that. The Government represented it was voluntary in compos mentis, and I accepted that, and I accept it now.

MR. WEINSTEIN: Good. In that event, your Honor, that factual foundation for the releases has been laid, and accepted, I can only suggest that if for no other reason, it is awfully important that these be clarified for the rec-

ord, that these releases which go as far, and somewhat further than many that are in standard use today —

THE COURT: What do you want clarified?

MR. WEINSTEIN: Are no good. If these are not valid to relieve of criminal or civil liability, physicians, then I think a serious question is raised as to whether any release can ever be good.

THE COURT: I am not saying that they are not valid. I am saying that there are cases where releases have been shown not to be an adequate defense in civil matters, and in criminal matters there is more of a shadow in this area. That's all

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I am saying. I am not saying that the Georges' releases as a matter of law are inadequate in this case. I am just saying that the blanket statement that releases are signed, and that relieves everyone from civil liability — I just would put a little question mark after that.

But what do you have to make clear for the record? The record is clear on this. Releases were signed. As a matter of fact, I found that he was compos mentis when he signed them, and they are exhibits in the files. What else do you want to do with it?

MR. WEINSTEIN: It's a legal clarification of the effect of the releases, not the factual clarification. Initially, when your Honor made the decision on the evening of the 17th, it was not clear from the order whether your Honor had seen these releases at all, and at that point I didn't know.

Then the four memoranda of your Honor did make clear that you had seen them, if not then, in — then subsequent to then. But the legal effect of the

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releases, I was not implying that any sort of a release automatically disposes of a matter. What I am saying is that, if the releases in this case, these particular releases, framed

at the hospital presumably by some competent authority at the hospital, and signed by the Georges, if this kind of release is not adequate, then, query, can any release ever be adequate legally? Not a factual clarification.

I think it would be awfully important. Or else a great many more questions will be raised, and answered, by this case.

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THE COURT: It may be so recorded. I might just add — and I add it parenthetically, because I don't think anyone has to present proof of their religious beliefs — I don't believe anyone has to convince anyone else that their religious beliefs are founded in the law of God, or the law of their own God, and, therefore, is justifiable. I respect their belief. I find them — I do not find that they are foolish, contrary to belief, or unworthy of respect, but I just might add parenthetically, this was not shown to me.

MR. HOW: Yes.

THE COURT: But if it had been, it would not have influenced me. They did not have to show me proof of their religious beliefs by citation of chapter and verse, but I just want the record to note that this is the first time I have seen this document. It may be so filed.

MR. HOW: Fine. Thank you, your Honor.

MR. WEINSTEIN: If your Honor please, a final observation, not really an offer of proof, as

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indicated in the brief, I don't know. I think possibly the Government might feel similarly to the defendants on this point, the paragraph of your Honor's opinion quoted at the top of page two of our memorandum concerning the distinction between a malpractice, and refusal to accept without clarification, raises once again for practicing counsel, who get involved in these things occasionally, some ques-

tions which lead I know not where, at what point is a physician obligated to seek a court order?

Is there any reason any more for anyone in a Veterans Hospital to have to consent to anything? Is a consent form now overruled because the doctor feels this is justified, the doctor feels in good faith, "Well, if I don't do it, this might be malpractice, so I am going to go ahead and do it anyway"? These distinctions at how far that paragraph was meant to go is completely unclarified, and once it becomes an operational part of the law, I think without clarification, it would make for some difficulty.

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THE COURT: You do raise that in your brief, and I think the memorandum of decision speaks for itself, and I am not in any way limiting it or explaining its scope, but certainly it doesn't have the connotation you are putting on it. There is a big difference, it seems to me, between a person who says, such as I believe the Christian Scientist people say, "Do not treat me," of the belief that no one can force someone to be treated.

Mr. George, if he said, "I am leaving this hospital now; I am releasing myself from your care; I am going out the door; I don't want you to treat me" — I would have respected that. I told him that. I said, "Mr. George, no one can force you to take medical treatment in this hospital." There's a big difference in that situation than in the situation where you say to a doctor, "Operate on me, but do it with a screwdriver, and not a scalpel. Remove my peptic ulcer, but don't give me a blood transfusion."

And when Dr. May said to me that the patient desired an operation, but under no conditions during

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that operation is he to have a blood transfusion, I said at that point, you can't say to a doctor, "Operate on me, but you operate on the way I tell you to operate."

In other words, you can decline medical treatment, but

you cannot insist on mistreatment. And that's what I find in this case. Mr. George did not decline medical treatment; he wanted it. Dr. May told me he wanted an operation. Once having said to Dr. May, or any other doctor, "Take my leg off, but do it with a saw, and not your medical instruments," there's a big difference between that and saying, "Don't take my leg off. Go away. I don't want you. I don't want any medical attention." That's the meaning of that.

In effect, the meaning of that, when I say a man may decline medical treatment, but he cannot insist on mistreatment — in other words, what I was balancing here is the conscience of the doctors, saying, "I am obligated to treat this man by my oath and by his request. Am I further obligated to operate on him, or to take care of him the way he wants me to,

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and violate my medical practice?"

I said to these doctors, each and every one, "If you follow Mr. George's request for treatment, which you are obligated to do, he is here and he wants treatment, how do you feel about it?"

Each and every one said to me that would be malpractice, if we did what Mr. George wanted. Dr. May said it would be malpractice for him to operate on this man without having blood transfusions available, and having him have blood transfusions prior to the operation.

That's the purpose of that sentence, in my opinion.

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THE COURT: I might say, gentlemen, that I looked at the hospital record that evening, and that's where I picked up that Mr. George was suffering from a variant of suicide, that came out of the hospital record, so that should be in the record, because I looked at that, and I considered that that evening. So the motion is granted.

MR. WEINSTEIN: Is it understood that a copy of the hospital record will be sent down to our office?

MR. MOSKOF: Absolutely.

THE COURT: Yes.

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THE COURT: You see, in a way, you are quite right in doing this, but in my mind, that played such a minor part in this whole thing, I didn't rule at all, because he didn't resist, he doesn't have to resist, no one can implore him to have treatment, and the only way he can stop it is by resisting, so that didn't enter my mind at all. Except, except, that it went to his credibility when I said to him, "All you have to do is raise your hand," and he refused to do even that little physical maneuver in front of me — not after I left — in front of me, which convinced me — or led to my belief that all he wanted to do is be able to say, "Look, the Judge is responsible to God for this; not me. But now that he is, fine, I will take these transfusions, and I want them. I don't want to die."

Do you see? Now, that's why I mentioned in my opinion, but not that it was the turning point of the decision, a man has to physically resist, because

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I believe he doesn't. I think the record is clear, so clear on this, that the Appellate Court won't have to weigh the conflicting testimony.

In other words, I said to the man, "All you have to do is just put your hand over your arm now," and he said, "No, I won't even do that."

Well, the whole decision didn't go off, because he didn't do that, but it was an indication to me on credibility, and as a fact, I found that he had the physical ability to raise his hand, because he shook hands with me, and we conversed, he moved around the bed, and I find that as a fact.

Now, what happened fifteen minutes after I left, and

a half-hour the next morning, in my mind, could not have influenced me. Something I did a half-hour before, you see.

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THE COURT: Yes, I agree with you on that. Because, as I said before, as I view it, there might be circumstances where I would not have signed the order, it comes to mind that the people there at the hospital I spoke to that night,

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and discussed this thing at length with, I think if they were in that bed, I would not have signed that order.

On the other hand, under the facts and circumstances of this case, I would do it again unless a higher authority is going to say, "Thou shalt not do this to Jehovah's Witnesses," period.

Now, if that becomes the law, fine. At the present time, as I see it, even with the Illinois decision, that there are differences, differences in the man's credibility, the Judge's belief of his sincerity, and his ferventness, the fact that he had four children, the fact that his mother implored me, his cousin implored me, these are all factors, you know, that weigh on a Judge's mind. It's not so clear-cut.

Now, maybe the Appellate Court will make it clear-cut. If they do, well, all right.

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COMPLAINT

—76—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10889

[SAME TITLE]

The United States of America, a body politic and sovereign, acting herein by the United States Attorney for the District of Connecticut complains and says:

1. That the action is brought by the United States of America and this court has jurisdiction pursuant to Title 18, United States Code, Section 1345 and the Declaratory Judgments Act, Title 28, United States Code, Section 2201, and Title 28, United States Code, Section 1651.

2. That the defendants are residents of the District of Connecticut.

3. That the defendant, Elishas George is presently a patient at the Veterans Administration Hospital, West Haven, Connecticut, having been admitted to the hospital on March 15, 1965.

4. That the defendant, Elishas George is suffering from a bleeding ulcer and has lost a substantial quantity of blood.

5. The patient is in critical condition and requires immediate blood transfusions.

6. The defendant, Elishas George, and the defendant Elizabeth George, wife of the defendant Elishas George have refused and continue to refuse to give consent to the hospital to administer blood transfusions.

7. Doctor Thomas A. Amatruda, Jr., of the Veterans Administration Hospital, West Haven, Connecticut advised

that the defendant is in such a critical condition that, but for the refusal of the defendants to grant permission, the hospital would have already administered a blood transfusion. Further, he advised that if the defendant, Elishas George, should begin to hemorrhage the lack of a blood transfusion would result in death.

8. The death of the defendant may result in irreparable injury, loss and damage to the plaintiff in that the plaintiff may well be subject to substant civil liabilities.

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WHEREFORE, the plaintiff demands:

(a) A decree in the nature of a declaratory judgment to determine the legal rights and liabilities between the hospital and its agents on the one hand and the defendants on the other;

(b) A temporary injunction restraining the defendants from withholding consent to administer the blood transfusions;

(c) A permanent injunction restraining the defendants from withholding consent to administer the blood transfusions; and

(d) Such other remedies in equity as the Court may deem appropriate including a specific order to the hospital to administer such transfusions as are in the opinion of the physicians in attendance necessary to save the defendant, Elishas George's life.

Dated at New Haven, Connecticut this 17th day of March, 1965.

United States of America
By: Jon O. Newman
United States Attorney
By: /s/ Howard R. Moskof
Assistant United States Attorney
Howard R. Moskof

(Duly verified on March 17, 1965.)

MOTION FOR PRELIMINARY INJUNCTION

—79—

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 10889

[SAME TITLE]

Plaintiff moves the Court for a preliminary injunction enjoining the defendants, ELISHAS GEORGE and ELIZABETH GEORGE, his agents, servants, employees, and attorneys and all persons in active concert and participation with him, pending the final hearing and determination of this action, from refusing and preventing the duly accredited and licensed physicians attending Elishas George at the West Haven Veterans Administration Hospital from administering such transfusions as are in the opinion of the physicians necessary to save his life and authorizing said physicians to administer such transfusions in order to maintain the status quo on the grounds that,

1. Unless restrained by this Court it is likely that the defendant Elishas George will die.

2. The death of the defendant may result in irreparable injury, loss and damage to the plaintiff in that the plaintiff may well be subject to substant civil liabilities.

3. The issuance of the preliminary injunction together with an order authorizing the physicians to administer such transfusions as are required will not

cause undue loss to the defendants but will prevent irreparable injury to the plaintiff.

United States of America
/s/ Jon O. Newman
Jon O. Newman
United States Attorney
/s/ Howard R. Moskof
Howard R. Moskof
Assistant United States Attorney

AFFIDAVIT

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VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516
March 17, 1965

We, the undersigned physicians, do hereby make the following statement:

Mr. Elishas George, a patient on the Medical Service at the Veterans Administration Hospital, West Haven, Connecticut, is seriously anemic by reason of bleeding from his gastrointestinal tract. The magnitude of the blood loss is so great that standard medical care would have dictated the administration of blood transfusions if this had been permitted by the patient. The laboratory tests obtained indicate that he has lost approximately 60 to 65% of his red cells and under accepted standards of medical care, he should have already been transfused with 4 - 5 pints of whole blood. His condition is precarious since any further significant blood loss would probably result in shock and the likelihood of death within a relatively short time. Furthermore, the degree of blood loss is so great that any at-

tempt at surgery without prior administration of blood would be extremely hazardous and in our opinion would result most likely in fatality. We feel strongly that the proper treatment of this patient would be blood transfusion at this time and that further blood loss without transfusion will, in our opinion, most likely result in fatality.

/s/ Thomas T. Amatruda, Jr, M.D.
Thomas T. Amatruda, Jr., M.D.
Chief, Medical Service
/s/ W. W. Lindenmuth, M.D.
W. W. Lindenmuth, M.D.
Chief, Surgical Service

(Jurat—duly sworn to March 17, 1965.)

ORDER

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10889

[SAME TITLE]

This cause having come to be heard upon application of the United States of America and it being represented by Assistant United States Attorney, Howard R. Moskof, after a Complaint being filed on March 17, 1965, and upon Motion, that Mr. Elishas George, a married male and father of 4 children, is presently a voluntary patient at the Veterans Administration Hospital, West Haven, Connecticut, and that after a personal visit and hearing with the patient, his

wife and mother at the hospital, and that it being represented that the physicians in attendance, Thomas T. Amatruda, Jr., M.D. Chief, Medical Service; Bernard W. Robinson, M.D., Chief of Staff; Carl May, M.D.; Richard Cooper, M.D.; and James Fischer, M.D., are of the opinion that blood transfusions are necessary immediately and it being further represented by the applicant that consent to the administration thereof can be obtained neither from the patient nor her husband, that the death of the defendant may result in irreparable injury, loss and damage to the plaintiff in that the plaintiff may well be subject to substant civil liabilities, and there is a showing that the plaintiff will likely prevail on the issues presented to this Court, it is therefore;

ORDERED that the applicant acting through its duly accredited and licensed physicians in attendance may administer such blood transfusions as are in the opinion of the physicians in attendance necessary to save the patient's life.

IT IS FURTHER ORDERED, that the application for a preliminary injunction prayed for in the complaint be and the same is hereby set for hearing before the undersigned in New Haven, Connecticut on the 26th day of March, 1965, or at such time as may be requested by the patient, his wife or their legal representative.

/s/ Robert C. Zampano
United States District Judge

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO WITHDRAW COMPLAINT AND APPLICATION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

—82—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 10,889

[SAME TITLE]

Plaintiff, UNITED STATES OF AMERICA, moves the Court to dissolve the temporary restraining order issued by the Honorable Robert C. Zampano, United States District Judge, dated March 16, 1965, authorizing the transfusion of ELISHAS GEORGE, to the extent "necessary to save the patient's life" and further the plaintiff hereby moves to withdraw the complaint and application for preliminary and permanent injunction. In support of its motion the plaintiff states:

1) That the patient, Elishas George, is not *in extremis* as evidenced by the affidavit of Thomas T. Amatruda, M.D. attached hereto as Exhibit "A".

2) That as evidenced by the Affidavit of Kisik Kim, M.D., Psychiatrist, Veterans Administration Hospital, West Haven, Connecticut, Mr. George is *compos mentis* and fully capable of deciding for himself the propriety of the blood transfusions, and of appreciating fully the consequences of refusing them, which is attached hereto and marked Exhibit "B".

3) Mr. George's wife, Elizabeth George, concurs in

his views and is fully aware of the consequences which may ensue from adhering to them.

4) That both Mr. and Mrs. George, on March 16, 1965, have furnished releases waiving, on behalf of themselves, civil liabilities to the Government for injuries or death occasioned by the failure to Mr. George to accept Blood transfusions, which waivers appear to adequately protect the United States of America, its employees and agents, and which exhibits are attached hereto as Exhibits C and D.

5) After timely examination of the laws of the State of Connecticut we could find no cases or statutes making it a crime to refuse to accept

[Endorsement:]
3/22/65 Motion granted. Memorandum of Opinion to be filed.

Robert C. Zampano
USDJ

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a blood transfusion or failing to transfuse a mentally competent adult male who has refused to consent to be transfused.

United States of America
By: Jon O. Newman
United States Attorney
/s/ Howard R. Moskof
By: Howard R. Moskof
Assistant United States Attorney

EXHIBIT A

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VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516
March 22, 1965

AFFIDAVIT

I, the undersigned physician, do hereby make the following statement:

Mr. Elishas George, a patient on the Medical Service at the Veterans Administration Hospital, West Haven, Connecticut, has responded well to therapy. As of 11:00 A.M. March 22, 1965, his condition is stable and there is no sign of further bleeding from the gastrointestinal tract. Therefore, *if his condition remains stable,* there would appear to be no indication for further blood transfusions at this time or in the foreseeable future. If he should start to bleed again or his condition changed in any other way, his case would have to be re-evaluated with respect to the need for additional therapy.

/s/ Thomas T. Amatruda, Jr.
Thomas T. Amatruda, Jr., M.D.
Chief, Medical Service

(Jurat—duly sworn to March 22, 1965.)

EXHIBIT B

VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516
March 20, 1965

CERTIFICATE

I hereby certify that I, Kisik Kim, M.D., of the VA Hospital psychiatric staff, conducted the clinical examination of Elishas George, at the request of the Medical Service of the VA Hospital on March 16, 1965 in order to evaluate the psychiatric status of the patient. Examination indicated that the patient was alert, fully oriented in all spheres, and was free of psychosis. The patient was aware of the nature of his current illness and the potentially fatal consequences without blood transfusion. However, it was noted that he was fatalistic in his attitude toward blood transfusion and stated that if he should die, he would accept it as God's will according to his religious belief. Except for his attitude toward blood transfusion, his judgment otherwise appeared to be intact. In my opinion the patient comprehended fully the nature and consequence of his actions. As a follow up to the initial psychiatric evaluation, as described above, patient was subsequently seen on March 18 and 19, 1965. The mental status of the patient remained essentially the same in that the patient appeared to be fully aware of the events of the immediate surroundings.

/s/ Kisik Kim
Kisik Kim, M.D.

(Jurat—duly sworn to March 20, 1965.)

EXHIBIT C

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VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516
March 16, 1965

Hospital Director
V. A. Hospital
West Haven, Connecticut

I, Elishas George, being of lawful age, do acknowledge that I have been advised by the medical staff at the Veterans Administration Hospital, West Haven, Connecticut, that it is imperative for the staff in order to save my life to cause blood transfusions to be administered to me, but, because I am a Jehovah's Witness, and blood transfusions are contrary to my religious beliefs, I have refused to allow the medical staff to administer the blood transfusions.

I am fully aware that by my refusal I am endangering my life and that death can result to me because of such refusal.

In full knowledge of the foregoing I do hereby forever release and discharge the United States, or any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of Connecticut, from any injuries or death which may be sustained by me because of my refusal to accept blood transfusions.

I do hereby release and discharge from the same liability any individual, doctors, members of the staff of the

Veterans Administration Hospital, West Haven, Connecticut, for any injuries or death which may be occasioned by his refusal to accept blood transfusions.

/s/ Elishas George
Elishas George

Witnessed by:
/s/ Richard A. Cooper, M.D.
Richard A. Cooper, M.D.
/s/ Robert S. Tiller
Robert S. Tiller

EXHIBIT D

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VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516
March 16, 1965

Hospital Director
V. A. Hospital
West Haven, Connecticut

I, Elizabeth George, of 208 Fourth Street, Bridgeport, Connecticut, am the wife of Elishas George. I have read the statement signed by my husband and I hereby release and discharge the United States, or any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of Connecticut, from any injuries or death which may be sustained by my husband because of his refusal to accept blood transfusions.

I do hereby release and discharge from the same liability any individual, doctors, members of the staff of the

Veterans Administration Hospital, West Haven, Connecticut, for any injuries or death which may be occasioned by my refusal to accept blood transfusions.

/s/ Mrs. Elizabeth George
Elizabeth George
(Mrs. Elishas George)

Witnessed by:
/s/ Richard A. Cooper, M.D.
Richard A. Cooper, M.D.
/s/ Robert S. Tiller
Robert S. Tiller

MEMORANDUM OF DECISION ON MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO WITHDRAW COMPLAINT

—88—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 10,889

[SAME TITLE]

This is a motion by the government to dissolve a temporary restraining order, signed by this Court on March 17, 1965, and to withdraw the complaint.

On March 17, 1965, at approximately 11:30 A.M., an attorney for the government, on behalf of the Veterans Administration Hospital located in West Haven, Connecticut, orally applied to this court for an order granting permission to administer blood transfusions to an emergency patient, Elishas George, in order to save his life. The pa-

tient refused to allow the medical staff to administer the blood transfusions on the ground he was a Jehovah's Witness and such transfusions were contrary to his religious belief. Upon being informed that the patient's condition was "precarious" but not extreme, this Court refused to act on the oral application. Thereafter the government brought this civil action with service upon both Mr. and Mrs. George, and set the matter down for hearing on March 18, 1965. Compare, *Application of the President and Directors of Georgetown College, Inc.*, 331 F. 2d 1010, 1011 (D.C. Cir. 1964) (Miller, J., dissenting).

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However, at approximately 6:30 P.M., on March 17, 1965 the Court received a telephone call from the government's attorney to the effect that the patient's condition was now critical, that the government had prepared, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, written application for a temporary restraining order with an affidavit from the treating physician stating the Court's order was now a necessity to save the patient's life thus preserving the status quo pending a full hearing.

The Court arrived at the hospital at 8:00 P.M. and until 10:15 P.M. interviewed five doctors, Mrs. George, Mr. George, Mrs. Gradie George, mother of the patient, and several members of the Jehovah's Witnesses sect. Both Mr. and Mrs. George expressly declined the Court's offer to appoint counsel of their own choosing or to be represented by an attorney selected by the Court.

On March 15, 1965, George, the 39 year old father of four children, voluntarily admitted himself to the hospital for treatment of a bleeding ulcer. Although bleeding seriously from his gastrointestinal tract, he refused blood transfusions. Both George and his wife were Jehovah's Witnesses, the teaching of which sect prohibited the transfusion of blood into the body. The patient and his wife

signed releases, relieving the hospital and its employees of any civil liability for any injury which followed from the lack of blood transfusions.

The medical testimony was clear the blood loss was so great that standard medical care dictated the administration immediately of at least five pints of whole blood. The laboratory tests indicated he had already lost 60 to 65% of his red blood cells. His conditon was grave, and any fur-

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ther bleeding, without blood transfusion, would most likely lead to shock and probable death. Psychiatric reports indicated the patient showed a lack of concern for life, and a somewhat fatalistic attitude about his condition was described as "a variant of suicide."

Mr. George appeared to the Court to be coherent, rational and rather strong. However, doctors in attendance agreed his outward appearance was deceiving and his internal condition was most serious. When the Court introduced himself, George's first remarks were that he would not agree to be transfused but would in no way resist a court order permitting it, because it would be the Court's will and not his own. His "conscience was clear", and the responsibility for the act was "upon the Court's conscience." He stated he would rather die than agree to a transfusion. The Court advised George it had no power to force a transfusion upon him, and he was free to resist the transfusion, even by the rather simple physical maneuver of placing his hand over the area to be injected by the needle. George stated he would "in no way" resist the doctors' actions once the Court's order was signed.

Mrs. George, citing certain passages from the Bible, was adamant in her opposition to the transfusions. She insisted that the Court had no right to order the transfusion in violation of their religious beliefs. Two other Jehovah's Witnesses, visiting the patient, concurred in Mrs. George's remarks.

The patient's mother, Mrs. Gradie George, not a member of the sect, informed the Court her son has been a Jehovah's Witness for two years, and she favored the transfusions.

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The Court thereupon signed the order allowing the hospital to "administer such blood transfusions as are in the opinion of the physicians in attendance necessary to save the patient's life." Moreover, the Court ordered another hearing on the motion on March 26, 1965, or "at such time as may be requested by the patient, his wife, or their legal representative." To date, neither the Georges nor their legal representative have petitioned the Court to dissolve the order.

In most significant respects the instant case is similar to *Application of President & Directors of Georgetown College, Inc.*, 331 F. 2d 1000 (D.C. Cir. 1964), cert. denied 377 U.S. 978 (1964), wherein Judge Wright issued an order comparable to the one issued by this Court. Both patients were suffering from bleeding ulcers and required immediate lifesaving blood transfusions. Both patients refused to be transfused on religious grounds; both were Jehovah's Witnesses. Furthermore, at the time of the hearing in the present case it could not be said with certainty the releases executed by the Georges completely absolved the doctors in attendance of all civil and criminal liability. However, in Judge Wright's case the patient was found to be, in effect, *non compos mentis,* whereas in the present case the patient was found by the Court to be coherent and rational.

Although the patient here appeared to have possessed greater national capacity than the patient involved in the *Georgetown College* case, supra, this variance does not compel dissimilar results. Helpful guidelines are found in Judge Wright's opinion, and, where applicable, his rationale is adopted.

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In addition to the factors weighed by Judge Wright one consideration is added to the scale. In the difficult realm of religious liberty it is often assumed only the religious conscience is imperiled. Here, however, the doctor's conscience and professional oath must also be respected. In the present case the patient voluntarily submitted himself to and insisted upon medical care. Simultaneously he sought to dictate to treating physicians a course of treatment amounting to medical malpractice. To require these doctors to ignore the mandates of their own conscience, even in the name of free religious exercise, cannot be justified under these circumstances. The patient may knowingly decline treatment, but he may not demand mistreatment. Therefore, this Court, as Judge Wright, "determined to act on the side of life" in the pending emergency. 331 F. 2d at 1010.

The Court was informed that a series of transfusions have commenced since the signing of the order. No request has been made by the Georges or their counsel to test the legality of the order. However, on March 22, 1965, the government filed the present motion to dissolve the temporary restraining order and to withdraw the complaint. Supported by affidavits, the government alleges that the patient is no longer *in extremis* and is now sufficiently physically rehabilitated to determine with reflection and study the propriety of continued blood transfusions for his own complete recovery.

Accordingly, the motion is granted.

Dated at New Haven, Connecticut this 22nd day of March, 1965.

Robert C. Zampano
United States District Judge

WITHDRAWAL OF ACTION

—93—

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[SAME TITLE]

The plaintiff, UNITED STATES OF AMERICA, hereby withdraws the above-entitled action against the above defendants, ELISHAS GEORGE and ELIZABETH GEORGE.

United States of America
By: Jon O. Newman
United States Attorney
By: /s/ Howard T. Owens, Jr.
Howard T. Owens, Jr.
Assistant United States Attorney

Dated at New Haven, Connecticut
this 26th day of March, 1965.

REVISION OF MEMORANDUM OF DECISION ON MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO WITHDRAW COMPLAINT

—95—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10,889

[SAME TITLE]

The first complete paragraph on page 2 commencing with the words: "However, at approximately" is revised to read as follows:

"However, at approximately 6:30 P.M., on March 17, 1965 the Court received a telephone call from the government's attorney and was informed the patient's condition had become critical. Further, the government had prepared, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, written application for a temporary restraining order supported by an affidavit from the treating physician which stated the Court's order was now necessary to save the patient's life."

In all other respects the Memorandum of Decision filed on March 24, 1965 remains unchanged.

Dated at New Haven, Connecticut this 20th day of April, 1965.

Robert C. Zampano
United States District Judge

PETITION

—96—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10889

[SAME TITLE]

Now come the defendants, Elishas George and Elizabeth George, by their attorney, and petition this Honorable Court to vacate its order of March 22, 1965, granting plaintiff's motion to dissolve the temporary injunction granted and allowing withdrawal of the complaint, and do further petition that the court order the cause to be reopened and order the filing of defendant's answer submitted herewith;

and to grant a hearing and declaratory judgment as demanded in the answer of defendants.

That the precipitate action of the plaintiff under pretense of emergency has succeeded in accomplishing a wholly unlawful invasion of defendant's rights and if the case is not reopened and judgment rendered after hearing on both sides, a great injustice will result. Furthermore, defendant Elishas George, a veteran will be deprived of his right to non-discriminatory treatment at the Veteran's Administration Hospital, since it is now a matter of record in this Court that in treating defendant, there remains no obligation to respect his conscientiously held religious views. Defendant is therefore permanently denied the exercise of his rights.

WHEREFORE the defendants, Elishas George and Elizabeth

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George, pray that this petition be granted, that a hearing be allowed and the declaration judgment as prayed for in the answer be allowed.

DONE this 24th day of March, 1965.

Elishas George and
Elizabeth George
Defendants
By
Burton M. Weinstein
1115 Main Street
Bridgeport, Conn.
367-7437
Attorney for Defendants

ANSWER

—98—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10,889

[SAME TITLE]

Defendants Elishas George and Elizabeth George, acting herein by their attorney, in answer to the complaint filed now say:

1. That defendants are citizens of the United States and entitled to the guarantees of the First, Fifth and Fourteenth Amendments to the United States Constitution.

2. That consumption of human blood is prohibited by the Bible which defendants accept as expressive of their religious duty, wherefore transfusion of blood into the body of Elishas George is a violation of his religion.

3. That both defendants did, on the 16th day of March, 1965, sign waivers releasing the plaintiff, Veterans Administration Hospital, West Haven, Connecticut, and all servants, employees and agents of said plaintiff from all civil liability that might arise from any damage caused to defendant Elishas George by virtue of his refusal to accept a blood transfusion.

4. That the complaint is founded on a hypothetical situation instead of upon existing facts.

5. That there is no justiciable controversy between the parties.

6. That in view of the waivers signed by defendants, the

plaintiff cannot be subject to civil liability as is well known to the plaintiff.

WHEREFORE defendants demand:

(a) A declaration that the plaintiff has no status to maintain the action.

(b) A declaration that a citizen of the United States can decide for himself what treatment he will take and no federal officer, whether judicial or administrative, can remove this right from him.

(c) A declaration that the refusal to accept a blood transfusion is the right of the defendants as guaranteed by the First and Fifth Amendments to the United States Constitution.

(d) A permanent injunction restraining the plaintiff, by its attorneys or other officers, from in any way seeking to enforce blood transfusions, or transfusion, upon the defendant, Elishas George.

(e) A declaration that the temporary injunction granted was given wholly without jurisdiction and was void *ab initio*.

(f) A declaration that the court had no jurisdiction to entertain the proceeding filed and that all things hitherto done in this matter were without jurisdiction.

(g) That the blood transfusions forced upon the defendant, Elishas George, constitutes an unlawful assault upon him.

(h) That defendants have been denied freedom of religion, due process of law, the right to be left alone, and freedom to contract.

Dated this 24th day of March, 1965.

Elishas George and
Elizabeth George
Defendants
By
Burton M. Weinstein
1115 Main Street
Bridgeport, Conn.
367-7437
Attorney for Defendants

AFFIDAVIT

—100—

April 2, 1965

I, Frances Eagles, hereby certify that I was assigned as a special attendant to Mr. Elishas George from 10:00 p.m. to 12:00 midnight on March 18, 1965. At no time during this period was Mr. George in restraints. A blood transfusion was started during this time.

/s/ Frances M. Eagles
Frances Eagles

(Jurat—duly sworn to April 2, 1965.)

AFFIDAVIT

—101—

April 2, 1965

I, Creola Gregg, hereby certify that I was assigned as a special attendant to Mr. Elishas George from 3:30 p.m. to 12:00 midnight on March 18, 1965. At no time during this period was Mr. George in restraints. A blood transfusion was being administered during this time.

/s/ Creola Gregg
Creola Gregg

(Jurat—duly sworn to April 2, 1965.)

AFFIDAVIT

—102—

April 2, 1965

I, Edith Taylor, do hereby certify that I was assigned as a special attendant to Mr. Elishas George from 7:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 4:00 p.m. on March 18, 1965. At no time during this period was Mr. George in restraints. Blood transfusions were being administered during these times.

/s/ Edith Taylor
Edith Taylor

(Jurat—duly sworn to April 2, 1965.)

AFFIDAVIT

—103—

April 6, 1965

I, Elizabeth Marshall, R. N., hereby certify that I was assigned as a special nurse to Mr. Elishas George from 12:00 midnight to 8:00 a.m. on March 18, 1965. At no time during this period was Mr. George in restraints. Mr. George was receiving blood during this period.

/s/ Elizabeth Marshall, R. N.
Elizabeth Marshall, R. N.

(Jurat—duly sworn to April 6, 1965.)

AFFIDAVIT

—104—

April 2, 1965

On the night of March 17, 1965 I was present when Dr. Richard Cooper began an intravenous infusion of whole blood on Elishas George and I personally began a second

unit of whole blood at 12:15 A.M. on March 18, 1965. The patient was not in restraint at the time these transfusions were administered. Force was not required to administer the blood, and the patient made no physical or verbal attempt to stop the blood at the time of transfusion.

On March 18, 1965 at 2:30 P.M. I restarted an intravenous infusion and began infusion of the third unit of whole blood. Again, the patient offered no resistance, either verbal or physical, and was not restrained at that time.

/s/ James J. Fischer
James J. Fischer, M.D.

(Jurat—duly sworn to April 2, 1965.)

AFFIDAVIT

—105—

April 6, 1965

On the night of March 18, 1965 at 6:30 P.M. a blood transfusion was started by myself on Elishas George. The transfusion was completed by 10:30 P.M. The patient was not in restraint at the time the transfusion was administered. Force was not required to administer the blood. The patient made no physical or verbal attempt to stop the blood at the time of transfusion. At 11:15 P.M. on March 18, 1965 I was notified that the patient had climbed out of bed over the siderail stating he wished to void. Because of apparent mild confusion secondary to his heavy sedation he was placed in a simple chest restraint. At no time was he further restrained, his hands and feet being at all times free. At no time was blood started during the time he was restrained.

/s/ Hugh H. Tilson, M.D.
Hugh H. Tilson, M.D.

(Jurat—duly sworn to April 6, 1965.)

AFFIDAVIT

—106—

April 6, 1965

On the night of March 17, 1965 a blood transfusion was started by myself on Elishas George. The patient was not in restraint at the time the transfusion was administered. Force was not required to administer the blood. The patient made no physical or verbal attempt to stop the blood at the time of transfusion. This transfusion was started at 10:45 P.M.

/s/ Richard A. Cooper
Richard A. Cooper, M.D.

(Jurat—duly sworn to April 6, 1965.)

AFFIDAVIT

—107—

VETERANS ADMINISTRATION
HOSPITAL

West Spring Street
West Haven, Conn. 06516

April 1, 1965

Mr. Elishas George was discharged from the Veterans Administration Hospital, West Haven, Connecticut on March 27, 1965. He had received maximum hospital benefit and was discharged back to the care of his private physician.

/s/ Thomas Amatruda, Jr., M.D.
Thomas T. Amatruda, Jr., M.D.
Chief, Medical Service

(Jurat—duly sworn to April 1, 1965.)

AFFIDAVIT

—108—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10,889

[SAME TITLE]

I, Howard R. Moskof, having been duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the District of Connecticut.

2. On March 17, 1965 at approximately 3:00 P.M. Dr. Thomas Amatruda, at my request, brought Mrs. Elishas George to the telephone whereupon I conducted a conversation with Mrs. George and Dr. Amatruda. During the course of this telephone conversation the following points were made clear to Mrs. George:

a. The United States of America was contemplating the filing of a petition with the District Court to grant permission to transfuse her husband pending a determination of civil and criminal liabilities of the United States, its employees, and agents, for failing to transfuse Mr. Elishas George.

b. Mrs. George was advised to obtain counsel and have him immediately contact the office of the United States Attorney.

c. That the hospital would not stop Mrs. George from taking her husband out of the hospital in the event they chose this method of avoiding transfusion.

3. Counsel for the defendant did not contact the

United States Attorney's office until after an appearance had been filed on March 27, 1965.

/s/ Howard R. Moskof
Howard R. Moskof
Assistant United States Attorney

(Jurat—duly sworn to May 3, 1965.)

AFFIDAVIT

—109—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10889

[SAME TITLE]

I, EDWARD F. KUNIN, being duly sworn, hereby depose and say:

1. I am a member of the Bar of the State of Connecticut.

2. On March 17, 1965, my office received a call from Mrs. George requesting that I contact her at the Veterans Administration Hospital in West Haven.

3. I called said hospital during the afternoon of the 17th and was advised that I could not be put in touch with her because telephone connections were not made with the ward but that a message would be given to her indicating that I had returned her call.

4. I heard nothing further from her after making that call.

/s/ Edward F. Kunin
Edward F. Kunin

(Jurat—duly sworn to May 4, 1965.)

AFFIDAVIT

—110—

May 7, 1965

On the night of March 17, 1965 Elishas George had received large doses of barbiturates. However, the sedative effect was not enough to impair his judgment or to physically prevent him from interfering with or preventing the transfusion.

/s/ Richard A. Cooper
Richard A. Cooper, M.D.

(Jurat—duly sworn to May 7, 1965.)

AFFIDAVIT

—111—

May 7, 1965

The following information is taken from the record of Mr. Elishas George.

Excerpt from final summary dated 4/2/65 signed by Doctors Vogel and Andriole:

"The patient maintained that he could not receive blood transfusions because of religious convictions. However, he said that if he was given blood, there was nothing he could do about this."

Excerpt from Nursing Notes dated 3/15/65 signed by Miss Jo-Ann Misbach:

3/15/65 5:45 p.m. ". . . States 'Cannot receive any blood due to Religion, but if we force it on him he will have to take it.'"

I certify that the above is a true copy of the entries in the hospital clinical record of Mr. Elishas George.

/s/ Robert S. Tiller
Robert S. Tiller
Chief, Registrar Division

(Jurat—duly sworn to May 7, 1965.)

AFFIDAVIT

—112—

May 11, 1965

On the night of March 17, 1965 Elishas George had received large doses of barbiturates. However, the sedative effect was not enough to impair his judgment or to physically prevent him from interfering with or preventing the transfusion.

/s/ James J. Fischer
James J. Fischer, M.D.

(Jurat—duly sworn to May 7, 1965.)

AFFIDAVIT

—113—

May 7, 1965

Mr. Elishas George was hospitalized on the Medical Service on which I was an acting intern. The reason for hospitalization was a massive bleeding episode from his upper gastrointestinal tract from which he was in critical condition. As part of therapy, commensurate with the severity of his illness, he was treated with heavy sedation with barbiturates and blood transfusion.

At no time during his transfusion was he ever physically restrained. At no time during his hospitalization was his physical strength ever clinically impaired by his level of sedation; during each of his transfusions that were witnessed by me he was awake, moving all four extremities, and able at any time to physically interrupt transfusion if he so desired.

At only one time, on March 18, 1965, at a time when transfusion was not running, he became slightly confused and at that time was strong enough to climb over the side-rails of his bed, his physical strength being excellent. No

similar episodes of confusion occurred before or after that single event, to my knowledge.

/s/ Hugh H. Tilson, M.D.
Hugh H. Tilson, M.D.

(Jurat—duly sworn to May 7, 1965.)

ORDER ON DEFENDANTS' MOTION TO REOPEN

—115—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10,889

[SAME TITLE]

By Memorandum of Decision dated March 22, 1965 this Court granted the government's motions to dissolve a temporary restraining order and to withdraw the complaint in this action. On March 25, 1965 defendants moved to reopen the action in order to answer the government's complaint and counterclaim for certain declaratory relief.

Having heard additional testimony and arguments, having considered the briefs and moving papers of the parties, and having found the service of notice of the government's motion to dismiss its action upon the defendants to have been untimely within the meaning of Rule 41(a)(2) of the Federal Rules of Civil Procedure, it is therefore

ORDERED, that defendants' motion to reopen is hereby granted, and it is further

ORDERED, that the order of this Court dated March

22, 1965 dissolving the temporary restraining order is hereby vacated, and it is further

ORDERED, that the order of this Court dated March 22, 1965 granting the government's motion to withdraw its complaint in this action and to dismiss this action without prejudice is hereby vacated, and it is further

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ORDERED, that treating the defendants' answer and prayer for relief as an answer and counterclaim for declaratory relief, and treating the government's opposition to the motion to reopen and its opposition to the counterclaim for declaratory relief as a motion to dismiss the defendants' counterclaim, the government's motion is granted, and the defendants' counterclaim is hereby dismissed, and it is further

ORDERED, that the order of this Court dated March 22, 1965 dissolving a temporary restraining order, which order was previously vacated, is hereby reinstated, and it is further

ORDERED, that the order of this Court dated March 22, 1965 granting the government's motion to withdraw its complaint in this action and dismissing the government's action without prejudice, which order was previously vacated, is hereby reinstated.

Dated at New Haven, Connecticut this 6th day of May, 1965.

/s/ Robert C. Zampano
United States District Judge

AFFIDAVIT

—117—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil No. 10889

[SAME TITLE]

I, Burton M. Weinstein, being duly sworn, hereby depose and say that:

1. I am a member of the Bar of the above entitled Court and attorney for the defendants in the above entitled action.

2. On June 15, 1965, the following article appearing in the Bridgeport Post, was called to my attention:

> TRANSFUSION IS GIVEN UNDER COURT ORDER
>
> BRISTOL (AP)—Richard C. Fellows, 45, of Bristol, a Jehovah's Witness, remains in critical condition at the Bristol Hospital after receiving a court-ordered blood transfusion.
>
> Fellows had refused the transfusion Saturday on religious grounds.
>
> He had been injured in a fall from a fourth-floor back porch at his home.
>
> Circuit Court Judge Harold Missal ordered the transfusion, referring to a similar case decided by U. S. District Court Judge Robert C. Zampano.

3. On June 21, 1965 I had a telephone conversation with Judge Harold Missal of the Circuit Court of Connecticut concerning the circumstances surrounding the entry of the order described in the above article.

4. Judge Missal advised as follows:

(a) On the evening of June 14, 1965 he received a call from a physician at the Bristol Hospital advising that one Richard C. Fellows was in critical condition and required a blood transfusion as a result of injuries suffered in a fall.

(b) The Doctor reported Mr. Fellows was a Jehovah's Witness and that either he or members of his family indicated that their religion prohibited the giving of a transfusion.

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(c) The doctor requested the Judge's advice as to the law covering the situation.

(d) He had recalled hearing of Judge Zampano's action in the above entitled case and advised the doctor that Judge Zampano had ordered the transfusion to be given.

(e) Without further explanation or discussion the doctor then hung up.

(f) No action involving the Fellows situation had been brought in court and there are no court records concerning the Fellows situation.

Further, deponent sayeth not.

/s/ Burton M. Weinstein
Burton M. Weinstein

(Duly verified on July 19, 1965.)

HOSPITAL RECORD

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Patient's Name	Age	Sex
GEORGE, Elishas NMI	39	Male

Unit No.	Claim No.	Name of Hospital
014647	C-	VAH West Haven, Conn.

Diagnoses . . .

1. Duodenal ulcer with upper GI hemorrhage.

• • • • •

Summary . . .

This 39 year old Negro married male father of four, a Jehovah's Witness, entered with a five-day history of rusty stools and a four-day history of dizziness with standing, especially with micturition. The patient was told that he had an ulcer but no x-rays were taken, about twelve years ago. Since then he has noted occasional epigastric discomfort which is relieved by milk or raw eggs. The patient states that he has always bled easily. An insurance physical exam six months ago was negative. Family history, etc. was entirely negative, and the patient previously was in good health.

The patient maintained that he could not receive blood transfusions because of religious convictions. However, he said that if he was given blood, there was nothing he could do about this.

Examination on admission revealed a Negro man in no distress who did not appear ill. His pulse was 120 sitting and 100 lying; blood pressure 140/80. There was minimal epigastric tenderness. Bowel sounds were hyperactive. Stool was 4+ guaiac positive. His hematocrit was 20, white count 11,350 with 48 segs., 38 lymphs, 6 monos, 7 eosinophils. On the following day his hematocrit was 16 with 15.6% retics, MCH 21, MCV 79.5, MCHC 26.5. Urinalysis was normal; BUN 21, 16 and 19; FBS 100; liver function tests normal; ceph. floc, 2+ and 3+, transaminase 42; electro-

lytes normal; calcium 8.8; phosphorus 3.4; VDRL negative. Upper GI series revealed a deformed duodenal bulb but no active ulcer crater was seen. Barium enema was normal. Small bowel follow through was normal.

(over)

Admission Date	Discharge Date	Type of Discharge
3/15/65	6/27/65	MHB

Inpatient Days
12

Signature of Physician
Richard Cooper, M. D.

VA Form 10-1000 HOSPITAL SUMMARY eh-4/2/65

* * * * *

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The patient was treated with sedation and a bland regimen. His hematocrit fell to 16, his pulse stabilized at 100 to 110 and his systolic blood pressure between 80 and 90. The patient remained like this until 3/17/65 when a court order was obtained to allow the patient to be transfused. He received four units of blood over the next two days, with his hematocrit rising to 31. In addition on admission, the patient was given a course of Inferon therapy. It was felt most likely that he had been bleeding for a long period of time and had already started to respond with an elevated reticulocyte count. His present admission was probably prompted by re-exacerbation of bleeding. The court order was vacated on 3/22/65.

The patient was discharged asymptomatic to the care of his private physician.

Medications: Gelusil; Bland Diet; Iron Sulfate 1 tablet t.i.d.

A prophylactic gastrectomy was considered in case the patient returned with another bleeding episode, however it was felt that he should be treated like any other patient with this disease. If he returns with a similar problem,

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* Symbol "r" following original record page numbers indicates *reverse* side, as pages are designated in original record.

namely bleeding again from his ulcer, the same procedure would have to be carried out and a court order obtained before the patient could be transfused. The hematocrit was 38 and the retic count 3.1% on discharge.

Richard A. Cooper, M.D.

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Doctor's Progress Notes

Clinical Record

Date

3/15/65

A. R. Note

39 year old Jehovah's Witness enter with 5 day history of "rusty stools" and a 4 day history dizziness with standing especially with micturition. Pt. was told he had an ulcer—(no x-rays) 12 years ago. Since then has relieved epigastric discomfort with milk & raw eggs when it occ. occurred. In general patient has a negative personal and family history. He does state that he has always bled easily. He had insurance physical exam 6 months ago which was completely negative.

Mr. George steadfastly refused to accept blood transfusions.

P.S. Pt. is a pleasant man in no distress. Well muscled and not appearing ill.

• • • • •

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Doctor's Progress Notes

Clinical Record
Date
3/15
Surgery

• • • • •

This man refuses blood but not surgery.

• • • • •

—123r—

If hypotension occurs with continued bleeding: emergency surgery could be done accepting poor risk.

Recommend: intensive sedation, [illegible], volume replacement with saline.

[Signature illegible]

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• • • • •

Psychiatry
3-16-65

A 39 yr. old, married, Negro male with peptic ulcer which has been bleeding last few days, was seen at Dr. Cooper's request.

It is noted that both the pt. and his wife are Jehovah's Witnesses and despite the fact that blood transfusion is urgently needed and repeatedly recommended by the staff, have steadfastly refused it.

• • • • •

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• • • • •

Pt's complete passivity and fatalistic attitude does suggest,

albeit associated with his religious convictions, a variant of suicide. In view of lack of consent from either the pt. or his wife for transfusion and this indicated med. Rx I am afraid I have little to contribute to solution of this dilemma. I would suggest, however, continuing your exploration with legal sources including the court and the hospital attorney.

K. Kim M D

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Doctor's Progress Notes

Clinical Record

3/17/65 G.I.

Pt. seen today with Dr. Spiro. Although pt. told several MD's of epigastric distress, today he denies any preceding symptoms suggestive of duodenal ulcer. Nonetheless, bleeding from duodenal ulcer is best bet. It would be nice to have documentation of upper GI nature of bleeding.

Dr. Spiro feels that if pt. does have presumed d.u. and survives this episode without surgery, with absence of previous complications or severe history—elective surgery would *not* be indicated. Instead ulcer regimen & possible keeping his own blood available for auto-transfusion. (There is a high recurrence rate of UGI bleeding after sub-total for d.u. r. 40-50% — C. D. Salurer [?] Am J Med Sci Feb '65.)

F A Katz

3/17/65
7:15 PM

I have seen this patient during the past 36 hrs and have followed his course

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closely. I have also talked extensively to him and members of his family. I have been and am concerned about the degree of his anemia and the fact that despite heavy sedation or even sleep he has had a persistent tachycardia. Although he has not had a bowel movement since admission his bowel signs are hyperactive so the possibility of continual bleeding exists. Even if he is not actively bleeding his situation is precarious and a significant further bleed-[ing] would be associated with shock and rapid demise. For this reason we have explored legal avenues that will permit us to give him proper medical care in the form of blood transfusions. The patient's mother, who is not a member of Jehovah's Witnesses, is very disturbed by his refusal to accept blood transfusion.

T. Amatruda, Jr. M.D.

3/17/65
8:00 PM

Court order obtained.

R. Cooper

* * * * *

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Doctor's Progress Notes

Date
Psychiatry
3/18/65

Follow-up note

It is noted that the pt. was given blood transfusion last night under court order. Pt. was seen again this morning at Dr. Cooper's request to evaluate pt's current psychiatric status esp. in view of his apparent agitation with weeping etc. earlier this morning.

As on my previous exam on 3-16-65, pt. appeared alert, pleasant and friendly, though he stated that he felt "un-

clean" for having been transfused. Pt. is fully aware that blood transfusion was given with a court order.

• • • • •

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Doctor's Progress Notes

• • • • •

3/22/65

The court order permitting transfusions to be given was vacated late this P.M. Therefore if the patient requires additional transfusions these *cannot* be given unless another court order is obtained.

T. Amatruda, Jr. MD

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MAR 23 1965

• • • • •

UPPER GI SERIES: (Dr. Lisi)

The patient did not cooperate with the examination very well and as a result there is much respiratory motion on many of the spot films. Barium flows readily through esophagus and cardia. The stomach shows no abnormality. Pylorus opens readily revealing a moderately deformed duodenal bulb. The duodenal loop is within normal limits, as is the proximal jejunum.

There is evidence of a chronic duodenal deformity. It is not absolutely possible to rule out an acute ulcer crater on this examination due to the patient's difficulty in co-

operating. I have not been able to demonstrate an active ulcer crater on this examination.

* * * * *

D. Bloom, M.D./mau

Standard Form 519-A
Radiographic Report

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Date	Medication and Treatment
*	* * * *
3-15	Phenobarbital 120 mgm po q60 6-12-6-12 JM/EM
3-15	Milk 100 cc Gelusil 30 cc Alternate q½o JM/EM
3-16	Phenobarbital 120 mg po Q4H 1-5-9-1-5-9 [initials]
3-18	Bland I; Special Full Liquid Diet
3/19/65	Phenobarbital 90 mgm Q6H po 6-12-6-12 LP
3/19/65	Milk 100cc 8-9-10-11-12 or Gelusil 30 cc po LP
3-19	Bland II
3-20	Phenobarbital 30 mgm po Q60 6-12-6-12 LP
3-20	Milk 100 cc or Gelusil 30 cc Q2 8-10-12-2-4 etc. LP
3-20	Milk of Magnesia 30 cc p.o. QD 9A LP

* * * * *

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Nursing Notes

Standard Form 510
Clinical Record

• • • • •

3/15/65 5:45 P.M. Wheel-chair admission of a 39 y.o. Negro male with c.c. of being "dizzy since last Thursday and having a pounding headache." No vomiting or nausea.

States "Cannot receive any blood due to religion, but if we force it on him he will have to take it."

• • • • •

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Nursing Notes

Standard Form 510
Clinical Record

• • • • •

3/17

• • • • •

3:10 P.M. In good spirits laughing and joking. Wife and other family members present. Ministers of faith present.

Milk and gel Q 30 min alternately.

10 P Court order obtained for transfusion. Transfusion started.

#1 added #2537B Serial #2-36079

#2 #2537A Serial #2-36022

Appears despondent.

L. Parello

• • • • •

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• • • • •

3/18/65

• • • • •

5-8 AM Appears to be despondent concerning transfusion however pt. otherwise generally is in jovial mood.
No stools, no emesis this tour.
E. Marshall RN

• • • • •

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3/19/65

• • • • •

1:15 AM Out of Posey Restraint and up to use commode chair - Had small constipated, dark brown stool - Specimen saved to send to Lab. - Dr. Tilson notified.

1:30 AM Back to bed and restraint (Posey) re-applied - Milk and Gelusil given as ordered - Resting quietly - Very pleasant and co-operative. M. Lieder RN

• • • • •

NOTICE OF APPEAL TO THE COURT OF APPEALS

—160—

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
Civil Case No. 10,889

[SAME TITLE]

June 30, 1965

Notice is hereby given that Elishas George and Elizabeth George, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the following portions of an order on defendants' "Motion to Reopen" entered in this action on May 6, 1965:

1. That portion of the order dismissing defendants' counter claim;

2. That portion of the order granting plaintiff's motion to withdraw its Complaint and dismissing the Government's action without prejudice.

/s/ Burton M. Weinstein
Burton M. Weinstein,
Attorney for Elishas George
and Elizabeth George,
Defendants-Appellants
1115 Main Street
Bridgeport, Connecticut 06603

DECISION

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ELISHAS GEORGE, et ux,
Defendants-Appellants.

Motion to dismiss appeal as moot.

Motion to dismiss appeal as moot is granted.

S.R.W.
P.R.H.
R.P.A.
U.S.C.JJ.

October 5, 1965

JUDGMENT

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifth day of October, one thousand nine hundred and sixty-five.

Present:

HON. STERRY R. WATERMAN,

HON. PAUL R. HAYS,

HON. ROBERT P. ANDERSON,

Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ELISHAS GEORGE and ELIZABETH GEORGE,
Defendants-Appellants.

A motion having been made herein by counsel for the appellee to dismiss the appeal as moot,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted and that the appeal from the United States District Court for the District of Connecticut be and it hereby is dismissed.

A. DANIEL FUSARO
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 779

ELISHAS GEORGE ET UX., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 38a–42a) is reported at 239 F. Supp. 752. The court of appeals' order dismissing the appeal as moot (Pet. App. 71a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 1965 (Pet. App. 72a). The petition for a writ of certiorari was filed on November 29, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

797-616—65

QUESTION PRESENTED

Whether petitioner's appeal was correctly dismissed as moot.

STATEMENT

At 5:45 on the evening of March 15, 1965, petitioner Elishas George voluntarily sought admission to the Veterans Administration Hospital at West Haven, Connecticut, where he was accepted for treatment of a bleeding ulcer (Pet. App. 60a–62a). The examining physicians determined that Mr. George was "seriously anemic by reason of bleeding from his gastrointestinal tract * * * that he had lost approximately 60 to 65% of his red cells," that his condition was "precarious" and that "any further significant blood loss would result in shock and the likelihood of death within a relatively short time" (Pet. App. 29a). Both the Chief of the Medical Service and the Chief of the Surgical Service of the Veterans Hospital concluded that the "accepted standards of medical care" required the immediate transfusion of four to five pints of whole blood (Pet. App. 29a–30a).

Petitioner George was a convert to the religious sect commonly known as "Jehovah's Witnesses" (Pet. App. 41a). The tenets of that sect prohibit its members from accepting blood transfusions, and petitioner refused to give formal consent to any such transfusions.[1] From the time of his admission to the hos-

[1] Mr. George's wife, also a Jehovah's Witness, similarly refused her consent to the transfusions. Both petitioners signed papers purporting to release the government and the hospital staff from liability if Mr. George's death should result from the failure to transfuse (Pet. App. 36a). Mr. George's mother (not a Jehovah's Witness) was of the view that the

pital, however, petitioner repeatedly stated to the attending doctors and nurses that although he could not consent to receiving blood transfusions, he would not resist any attempt to administer such transfusions to him (Pet. App. 54a, 60a, 68a).

Mr. George's condition deteriorated on the following day. To protect the government and medical personnel against civil or criminal liability in case of petitioner's death, the hospital administration requested the United States Attorney to obtain a court ruling. Accordingly, the next morning, March 17, 1965, the government instituted an action against both petitioners in the district court seeking a declaratory judgment of the rights and liabilities of the Veterans Hospital and its staff on one hand and the Georges and their children on the other (Pet. App. 26a). On the same day, an Assistant United States Attorney personally informed Mrs. George of the institution of the suit and advised her to obtain counsel promptly (Pet. App. 52a).

On the evening of the day that the suit was instituted, Mr. George's condition became critical (Pet. App. 29a–30a). At 6:30 p.m. the United States Attorney telephoned the district judge and requested a temporary order authorizing blood transfusions to keep Mr. George alive pending a full hearing on the suit (Pet. App. 39a). District Judge Zampano thereupon proceeded to the Veterans Hospital where he questioned the doctors and the Georges in the hospital

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necessary transfusions should be administered (Pet. App. 41a). The Georges' four children, all minors, apparently were not consulted.

room from 8:00 to 10:15 p.m. (Pet. App. 39a). The attending physicians unequivocally stated that immediate blood transfusions were necessary to keep Mr. George alive (Pet. App. 40a). When the judge advised Mr. George that he "had no power to force a transfusion upon him" (Pet. App. 40a), petitioner's response was the same as he had given the doctors: "he would not agree to be transfused but would in no way resist a court order permitting it, because it would be the Court's will and not his own" (Pet. App. 13a, 40a).

Having determined that petitioner George wanted the transfusions, and in fact would "welcome them," so long as formal responsibility for their authorization rested elsewhere (Pet. App. 12a, 24a), the district court signed a temporary order authorizing the hospital to "administer such blood transfusions as are in the opinion of the physicians in attendance necessary to save [Mr. George's] life" (Pet. App. 41a). The necessary blood transfusions were then administered. Although the restraint and sedation under which he was placed were not disabling, the patient offered no resistance (Pet. App. 48a–51a, 55a).

On March 22, 1965, the government moved to dissolve the temporary order and to withdraw its complaint because Mr. George was no longer *in extremis;* several days of psychiatric examination had revealed that he was *compos mentis* and appreciated the consequences of his refusal; waivers signed by Mr. and Mrs. George appeared adequate to protect the government and its employees from liability; and examination of Connecticut law had disclosed no statutes or cases making criminal the failure to transfuse an

unwilling mentally competent adult (Pet. App. 32a–33a). After initially permitting the complaint to be withdrawn (Pet. App. 38a, 43a), the court, on petitioners' request, reopened the matter (Pet. App. 56a). Petitioners then filed an answer which demanded, in substance, a declaratory judgment that the blood transfusions given to Mr. George violated his constitutional rights under the First and Fifth Amendments, and an order permanently enjoining the government from any further attempt to transfuse blood to Mr. George.

At a hearing held on May 6, 1965, the government introduced affidavits establishing, *inter alia,* that on March 27, 1965, Mr. George had been discharged from the West Haven Veterans Administration Hospital to the care of his private physician (Pet. App. 51a)[2] and therefore moved to dismiss the proceeding as moot (Pet. App. 7a). Petitioners made an offer of proof to the effect, *inter alia,* that Mr. George "is still suffering from his bleeding ulcer, is still eligible to, and may well require, treatment at the Veterans Administration Hospital * * *" (Pet. App. 16a). Treating petitioners' papers as a counterclaim for declaratory relief, the district court dismissed the counterclaim and reinstated its prior order dismissing the government's action (Pet. App. 56a). After hearing argument the court of appeals granted the government's motion to dismiss the appeal as moot (Pet. App. 71a–72a).

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[2] Mr. George was discharged as "asymptomatic" (Pet. App. 61a), that is, he showed no manifestations of a disordered functioning of the body. *Dorland's Medical Dictionary* (1960 Ed.).

ARGUMENT

Petitioners ask this Court, as they did the courts below, to determine whether government officials infringe the constitutional rights of a Jehovah's Witness by subjecting him to a blood transfusion against his will. Not only is this issue moot, as the court of appeals held, but it is not actually presented by the record in this case.

1. Mr. George was discharged from the Veterans Administration Hospital into the care of his private physician about nine months ago and the temporary order authorizing the blood transfusions which saved his life is no longer in effect. Nor is there reason in the record to suppose that petitioner's return to the hospital is imminent. Moreover, since Mr. George's condition does not stem from his military service, any future admission to a Veterans Administration Hospital is contingent upon the availability of hospital facilities beyond those necessary to treat veterans with service-connected disabilities and upon his inability personally to defray the cost of medical expenses. 38 U.S.C. 610, 612. Indeed, his refusal of reasonable medical treatment under accepted standards of medical care constitutes grounds upon which the Veterans Administration may decline to treat him in the future.[3] Hence recurrence of the issue involved here is, at best, conjectural.

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[3] Veterans Administration, *Department of Medicine and Surgery Manual* M–1, Part I, Ch. 1, Sec. 1I, Para. 1I.05:

> a. *Failure to Cooperate with Medical Staff.* A patient who fails to cooperate with the medical staff under the following circumstances will be discharged against medical advice:
>
> (1) * * *.

In these circumstances, the court below properly dismissed the appeal as moot. *Oil Workers Unions* v. *Missouri,* 361 U.S. 363; *Williams* v. *Simons,* 355 U.S. 49; *Harris* v. *Battle,* 348 U.S. 803; *Bus Employees Union* v. *Wisconsin Board,* 340 U.S. 416; *Eastern Airlines, Inc.* v. *Civil Aeronautics Board,* 185 F. 2d 426 (C.A.D.C.), vacated and ordered dismissed as moot, 341 U.S. 901; *Application of President & Directors of Georgetown College,* 331 F. 2d 1000, rehearing *en banc* denied, 331 F. 2d 1010 (C.A.D.C.), certiorari denied, 377 U.S. 978. This dismissal was particularly appropriate since petitioners were attempting to litigate significant constitutional questions. It is settled that federal courts do not decide such issues on abstract considerations or hypothetical possibilities. *Poe* v. *Ullman,* 367 U.S. 497, 501–509.[4]

2. In any event, while Mr. George declined to give his express consent to blood transfusions, his accompanying actions and remarks cast substantial doubt upon the real meaning of his "formal" refusal (pp.

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(2) Refuses, neglects, or obstructs reasonable treatment. Refusal of offered treatment will be measured by the decision that would have been made under the circumstances by an ordinarily reasonable person. If a person of ordinary judgment and prudence, with no question of compensation being involved, would have accepted the offered treatment, the treatment is considered reasonable and the refusal thereof by a patient may be considered unreasonable.

[4] Petitioners' citations (Pet. pp. 13–17) of State court decisions in which issues of public importance were decided by the courts even though moot are irrelevant. *Oil Workers Unions* v. *Missouri,* 361 U.S. 363, 367. *Henderson* v. *United States,* 339 U.S. 816, cited at page 15 of the petition, neither involves nor discusses mootness.

3–4, *supra*). It was reasonable for the district court to infer from his conduct that Mr. George wanted a transfusion but did not wish expressly to ask for blood. See Pet. App. 12a, 24a. Hence the record fails to present a clear-cut question as to the constitutional rights of one who unequivocally objects to blood transfusions necessary to save his life.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
JOHN W. DOUGLAS,
Assistant Attorney General.
ALAN S. ROSENTHAL,
RICHARD S. SALZMAN,
Attorneys.

DECEMBER 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965